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Security Council

Sixty-third year

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Friday, 12 December 2008, 10.25 a.m.

New York

President:	Mr. Jurica	(Croatia)
Members:	Belgium	Mr. Belle
	Burkina Faso	Mr. Tiendrébéogo
	China	Mr. Liu Zhenmin
	Costa Rica	Mr. Weisleder
	France	Mr. Lacroix
	Indonesia	Mr. Natalegawa
	Italy	Mr. Terzi di Sant'Agata
	Libyan Arab Jamahiriya	Mr. Gouider
	Panama	Mr. Suescum
	Russian Federation	Mr. Rogachev
	South Africa	Mr. Maqungo
	United Kingdom of Great Britain and Northern Ireland	Ms. Pierce
	United States of America	Ms. DiCarlo
	Viet Nam	Mr. Hoang Chi Trung

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Letter dated 21 November 2008 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 addressed to the President of the Security Council (S/2008/729)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

08-64445 (E)

Letter dated 21 November 2008 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council (S/2008/726)

The meeting was called to order at 10.25 a.m

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

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The President: I should like to inform the Council that I have received letters from the representatives of Bosnia and Herzegovina, Kenya, Rwanda and Serbia in which they request to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the consideration of the item without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

On behalf of the Council, I extend a warm welcome to the Minister of Justice and Attorney General of Rwanda, His Excellency Mr. Tharcisse Karugarama.

At the invitation of the President, Mr. Karugarama (Rwanda) took the seat reserved for him at the side of the Council Chamber; the representatives of the other aforementioned countries took the seats reserved for them at the side of the Council Chamber.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia; Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda; Mr. Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia; and Mr. Hassan Jallow, Prosecutor of the International Criminal Tribunal for Rwanda.

It is so decided.

The President: The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them the following documents: S/2008/729, containing the text of a letter dated 21 November 2008 from the President of the International Criminal Tribunal for the Former Yugoslavia addressed to the President of the Security Council; S/2008/726, containing the text of a letter dated 21 November 2008 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council; S/2008/515, containing the note by the Secretary-General transmitting the fifteenth annual report of the International Criminal Tribunal for the Former Yugoslavia; and S/2008/514, containing a note by the Secretary-General transmitting the thirteenth annual report of the International Criminal Tribunal for Rwanda.

At this meeting, the Security Council will hear briefings by the President of the International Criminal Tribunal for the Former Yugoslavia, the President of

the International Criminal Tribunal for Rwanda and the Prosecutors of the International Criminal Tribunals for the Former Yugoslavia and Rwanda.

I now give the floor to Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia.

Judge Robinson: I am indeed honoured to address this distinguished body for the first time in my capacity as President of the International Criminal Tribunal for the Former Yugoslavia (ICTY). Mr. President, may I also congratulate you on your assumption of the presidency of the Security Council and say that I am particularly honoured to address the Council during your tenure, given the importance of the Tribunal's work for your country.

The Tribunal has continued to work vigorously and diligently since the last reporting period. As a result, we are now close to completing our mandate. We have nevertheless experienced delays owing to a number of circumstances beyond our immediate control. First, delays have resulted, and further delays may be expected, from the late arrest of fugitives. In that regard, I refer to the case of Stojan Župljanin, a recently arrested fugitive whose case was found suitable for joinder with that of Mićo Stanišić. Although the joinder of those cases has had the positive effect of cutting the costs of running the Župljanin case as a separate trial, it has also delayed the start of the Stanišić trial, which was trial-ready at the time of Župljanin's apprehension.

Another example is the case of Vlastimir Đorđević, who was still at-large when the multi-accused trial of Milutinović et al began, in 2006. If Đorđević had been surrendered earlier, he could have been tried with his six co-accused. Now he must be tried alone, and dozens of witnesses will have to be brought back to the Tribunal to give evidence again in his case. On the basis of steps taken by the Tribunal, it is now expected that that trial may start as early as 15 or 16 December 2008.

If the fugitive Mladić is arrested now, his case may be joined with that of Karadžić; but that joinder would invariably delay the start of the Karadžić trial, which is currently being prepared for trial. On the other hand, any further delay in Mladić's arrest will likely result in the need for separate trials.

The case of Goran Hadžić, the other remaining fugitive, is not earmarked for joinder with any other case. An important consideration that the Council should be aware of is that, if he is arrested now, the Tribunal could avoid the need of retaining the capacity of trying a high-level accused in the Tribunal's residual mechanism. I must emphasize to the Council that the impact of late arrests on the orderly conduct of the Tribunal's business should not be underestimated. I therefore urge the international community to focus its efforts on securing the immediate arrest of the remaining fugitives as a matter of urgency, in accordance with the obligations of States under article 29 of the Tribunal's Statute. The international community must recognize the risks posed to international justice if those fugitives are not apprehended and brought to justice.

Other delays in trials have resulted from unforeseen circumstances. An illustration of that is the rendering of judgement in the Milutinović et al case, which was initially scheduled for September 2008 but will now be delivered in February 2009. While it is regrettable that the anticipated date of delivery of judgement in that case will not be met, it has to be borne in mind that estimation of the length of a trial, including the delivery of a judgement, is more an art than a science. My consultations with the presiding judge on that particular multi-accused case indicated that the delay arose from the difficulty of issues to be resolved and the concern that the hectic pace of the deliberations would impact on the fairness of the trial. That hectic pace resulted from the exigencies of the Tribunal's completion strategy. However, the completion strategy, while requiring the Tribunal to complete its cases as expeditiously as possible, does not anticipate that principles of fair trial and the rights of the accused should therefore be sacrificed. In that regard, I wish to thank the members of the Security Council for granting an extension of resolution 1800 (2008).

While the delays generated by those matters are cause for concern, it is important to bear in mind the Tribunal's remarkable achievements to date, which far surpass those of any other international or hybrid court, both in respect of the number of accused tried and in its contribution to the development of international criminal law. Of the 161 persons indicted, proceedings have been fully concluded against 116 of them. Considering the complexity of our cases, the breadth of

our indictments and the large number of victims and witnesses, the completion of such a high number of cases since the establishment of the Tribunal by the Security Council is a clear demonstration of the efficiency of the Tribunal's proceedings and of its steadfast commitment to the completion of its mandate. At this point, only five cases remain to be started, four of which involve late arrests, namely, those of Tolimir, Đorđević, Župljanin and Karadžić. The fifth case, that of Stanišić and Simatović, has been delayed owing to the ill-health of one of the accused.

In terms of judicial activities, we are currently running seven trials simultaneously in our three courtrooms, with our eighth trial, that of Đorđević, scheduled to begin on 15 or 16 December. Those trials involve a total of 27 accused, with judgement anticipated to be rendered shortly in the case of Milutinović et al, which involves six accused.

As detailed in the report, the Tribunal has continued to proactively seek new solutions to ensure the speedy completion of trials in full compliance with standards of due process. For instance, in order to take advantage of a gap in the trial schedule after the proceedings in the Stanišić and Simatović case had to be adjourned in May 2008, we commenced the Lukić and Lukić trial in its place on very short notice and, exceptionally as President, I am presiding over the proceedings in that case.

The efficiency of the International Tribunal's proceedings is also the result of the steadfast commitment of its Judges and staff. Court hearings at the Tribunal run from 8.30 in the morning to as late as 7.10 in the evening. In that respect I would like to make special mention of the extraordinary sacrifice made by some Judges who, owing to the exigencies of the completion strategy, are obliged to sit on two cases at the same time. They are usually ad litem Judges. But there is one permanent Judge who is presiding over two very complex cases at the same time. These Judges sit on one case from 8:30 a.m. to 1:45 p.m. and then on a second case from 2:15 p.m. to 7:00 p.m. with less than half an hour for lunch. Given their long hours sitting in court, other judicial work must be completed late into the evening and over the weekends. Moreover, owing to the long court hours, these Judges have little to no opportunity to attend to their personal matters during the day. The overall impact on the Judges of having to sit in court close to ten hours a day does take its toll but these Judges and others before them have taken on this responsibility with professionalism and enthusiasm and their commitment should be fully acknowledged as exemplifying remarkable dedication to the work of the Tribunal.

A number of other Judges are actively engaged in completing a trial in one case, while preparing another case for trial. This is a demanding workload that demonstrates their commitment to meeting completion strategy targets. The international community owes a huge debt to these Judges and their staff, who clearly place the needs of the International Tribunal and the dictates of the completion strategy far beyond their own comfort and their entitlement to reasonable working hours.

While we have achieved unparalleled efficiency in the conduct of our proceedings, these results can only be maintained by a proactive retention policy for key staff, which has been lacking so far. The examples I have just given you of the hard work and commitment of our teams demonstrate how important it is that we keep our most dedicated Judges and staff in order to maintain the high standards we have set. But I must stress that we have to remain vigilant that the closing stages of the Tribunal do not witness a diminution of the high standards we have set over the years. There is a real danger that, if measures are not taken now to provide staff with incentives to remain at the Tribunal in its closing stages, we may lose our highly and uniquely qualified legal staff. I therefore ask you to help me ensure that we maintain our commitment to the work of the Tribunal, which we must all finish together.

Another important matter that I intend to pursue and strengthen during my tenure is that of partnership with local judiciaries. As you will know, a key component of this cooperation was the referral of 13 accused to jurisdictions in the former Yugoslavia, ten accused having been transferred to Bosnia and Herzegovina, two to Croatia and one to Serbia. Pursuant to rule 11 bis, the Referral Bench continues to monitor referred cases and is thus far satisfied that they are being conducted in full compliance with international norms of due process.

I note that the Appeals Chamber ultimately decided not to refer one case, that of Lukić and Lukić. The history of that case is, in my view, a splendid example of the system for the administration of justice at the Tribunal working efficiently and fairly. First, the

case was sent to the Referral Bench to determine whether the accused were at the level to warrant their case to be referred to local courts. This is required by Security Council resolutions 1503 (2003) and 1534 (2004). The Referral Bench determined that the case should be referred but one of the accused appealed that decision, arguing that he was of too senior a level for his case to be referred to the local courts and that he should be tried at the Tribunal. That appeal was allowed and his trial is now taking place.

The Tribunal is also actively involved in capacity-building efforts in the former Yugoslavia, focusing on a number of key areas, including the facilitation of trial coverage by the local media, direct community outreach by its officers on the ground and capacity-building efforts with national judicial institutions addressing war crimes. For example, our local offices have organized training programmes, which, while directed primarily towards lawyers, have also targeted other professionals involved in war crimes proceedings, including witness support staff. Very recently, several Judges met in Belgrade with their counterparts from domestic jurisdictions and shared their expertise in trying war crimes cases.

Additionally, we have undertaken a number of projects that seek to identify best practices that may serve other domestic or international criminal justice institutions handling complex war crimes proceedings. The first such project consists of a compilation of our best practices, undertaken with the assistance of the United Nations Interregional Crime and Justice Research Institute; these will be published and disseminated shortly. We are also working in cooperation with the Organization for Security and Cooperation in Europe to assess our current outreach activities and training programmes in the former Yugoslavia to identify best practices. The objective of this assessment is to facilitate the creation of capacity-building programmes that meet the needs of domestic courts addressing war crimes cases.

All of these initiatives are part of our efforts to ensure that the long-lasting legacy of our work will continue to grow in importance as we near completion of the cases on our docket. Another increasingly urgent matter is the devising of an appropriate mechanism to address residual issues following the completion of our cases. That, as the Council knows, is a key issue currently on the agenda of the Security Council Working Group on Ad Hoc International Tribunals. In order to assist the Working Group in this complex task, the Tribunals issued a joint report in September 2007, followed by a number of additional clarifications, and invited the Working Group to visit the premises of the Tribunal and meet with the its Judges and staff. This visit provided the members of the Working Group with the opportunity to gain important insights into the daily work of the Tribunal and to hear the recommendations of Judges and staff on the nature and functions of the future residual mechanism. The members of the Working Group met not only with senior staff but also with Associate Legal Officers in order to truly get a feel for the daily work of the Tribunal.

I represent an institution that, as the first international tribunal since the International Military Tribunals of Nuremberg and Tokyo, has been the most significant actor in the development of international criminal law and the enforcement of international humanitarian law. At the procedural level it has judiciously used its rulemaking power to devise a comprehensive framework of rules of procedure and evidence that have already become the template for use in other kindred tribunals. Those rules achieve the twin objectives of expeditiousness and fairness. At the substantive level the Tribunal has, more than any other body, contributed to the development of a corpus of law that has eliminated impunity and entrenched the doctrine of individual criminal responsibility in the field of international criminal law.

Few would have imagined, only twenty years ago, that it would have been possible to bring before an international tribunal high-level individuals, including heads of State, accused of the most heinous crimes. I represent a court that has tried more persons for breaches of international humanitarian law than any other judicial body. I also represent an institution that, conscious of its responsibilities to the region, has worked strenuously to ensure that local judiciaries have the capacity to try war crimes cases in accordance with the highest international standards. I therefore represent an institution that can be justifiably proud of its achievements.

Nonetheless, I address the Council today humbled by the magnitude and complexity of the pioneering role of the Tribunal and deeply concerned that, as the Tribunal's work draws towards its final stages, it should remain sufficiently resourced to discharge its mandate. I therefore implore you today, members of the Security Council and of the

international community: Give the Tribunal the support it needs to enable it to discharge its historic role.

The President: I thank Judge Robinson for his briefing.

I now give the floor to Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda.

Judge Byron: This is the tenth time that the President of the International Criminal Tribunal for Rwanda (ICTR) has had the honour of addressing the distinguished members of the Security Council for the presentation of the Tribunal's report on its completion strategy. I am grateful for the opportunity to inform you about our achievements during the last six months and the challenges ahead of us.

I am happy to report that the majority of the projections I made in June 2008 have been realized. By the end of the year, four judgements will have been delivered — three single-accused cases and one multi-accused case. In addition, we have delivered four decisions on requests for referrals to national jurisdictions and one more will be rendered later in December.

Trial Chamber I focused on drafting the judgement in the huge and complex case involving four military leaders, *Bagasora et al.* That judgement will be delivered on 18 December. The Chamber also rendered two decisions denying requests for referral under rule 11 *bis*. In addition, judgements in the *Renzaho* and *Nsengimana* cases will be delivered in the first part of 2009. The completion of the evidence phase in the *Setako* case is scheduled for May.

As projected, Trial Chamber II closed the evidence in three multi-accused cases, *Butare*, *Military II* and *Bizimungu*, involving in total some 14 accused. Unforeseen legal complications make it necessary that in *Butare* and *Military II* some witnesses will be recalled in early 2009. However, that will not affect the scheduling for the signing of the closing briefs. The same trial bench that completed the evidence in *Military II* will deliver the judgement in *Rukundo* during the first part of 2009.

Trial Chamber III delivered judgements in the cases of *Nchamihigo* and *Bikindi*, and will rule in the *Zigiranyirazo* case on 18 December. In addition, it will have rendered two decisions on requests for referral by the end of this year. The progress of the fifth multi-accused case, *Karemera et al.*, was adversely affected by the deteriorating health of one co-accused, Mathieu Ngirumpatse, requiring him to stay in hospital and interrupting proceedings for several months. The Chamber is managing the procedural issues resulting from the medical problems and the trial is scheduled to resume in early February. The same bench that is hearing *Karemera* is also hearing the case of *Kalimanzira*. Only two trial weeks are remaining in that case and the evidence will be completed in the first week of February.

The preparation of each judgement requires long deliberations and other work done outside the court rooms, often including the need to respond to numerous interlocutory motions.

The Tribunal is facing a particularly challenging year in 2009. The workload ahead of us is greater than at any other point in the Tribunal's history. Proceedings may start in up to ten new cases, including five that could not be included in our planning when I addressed the Security Council in June. Our calendar has scheduled the evidence phase of all new trials to be completed before the end of next year.

The new cases include the trials of three accused arrested in 2007 and 2008, a retrial ordered by the Appeals Chamber and a contempt of court case. The main factor straining the capacity of the Tribunal is the denial of the Prosecutor's requests to refer one case to Norway and four cases to Rwanda for trial. These referrals have formed an integral part of the completion strategy. The Prosecutor of the ICTR continues to investigate the extent to which new requests for referrals can be pursued. In anticipation of his efforts, three trials have been scheduled later in the judicial calendar.

Instead of the decrease in workload that might have been expected as we move towards the completion of our mandate, we are now confronted with these ten new cases. At the same time, we are faced with the resignation of three judges, two permanent and one ad litem, by the end of 2008. Four additional judges — three permanent and one ad litem — have announced their intention to resign after the judgements in their current cases have been delivered. They are not available to take on new cases. It will therefore be critical to appoint at least four new ad litem judges to replace those seven judges who will not be available for new cases. Only three permanent

judges will remain to take on new cases. I have submitted to the Secretary-General a proposal for amendments of the Statute that will allow the Trial Chambers to be composed entirely of ad litem judges. I would respectfully ask the Security Council to consider this matter as a matter of utmost urgency in order to enable the Tribunal to begin hearing some of these new cases early in 2009.

In this context, I would like to reiterate my gratitude to the ad litem judges for their indispensable support to the Tribunal. Some of them have served for many years and on several cases concurrently. Their willingness to take on new cases in 2009 in addition to their current workload has been essential for the completion strategy, taking into account the anticipated unavailability of several permanent judges.

We want to achieve our goals, and the workload ahead makes it clear that business as usual is not an option. All three organs of the Tribunal — the Chambers, the Registry and the Office of the Prosecutor — are well aware of this and are closely working together. In particular, they are taking active steps to address staffing needs and to further develop tools for expediting proceedings while fully respecting the right of the accused to fair trials.

The Tribunal is grateful for the continued cooperation and assistance of Member States, on which it depends to fulfil its mandate. The long-standing issue of transferring convicted prisoners for the enforcement of their sentences is currently being addressed for a first group of convicts, following confidential orders. We are also grateful to have found a relocation State for one acquitted person. One more acquitted person remains in Arusha, and one convict will be released in December after having served his sentence. Both are awaiting a State willing to accept their relocation. The cooperation of the Council would be very much appreciated in this matter. In the reporting period, two accused arrested last year were successfully transferred to Arusha.

Unfortunately, no new arrests can be reported for the 13 fugitives still at large. As we approach the end of the Tribunal's mandate, I reiterate strongly my call upon Member States to cooperate fully with the Tribunal to ensure their arrest and transfer as soon as possible.

The final issue I would like to address is the Tribunal's legacy. Following the visit of the Security Council Informal Working Group in September 2008, we have been working closely with the Secretariat and our colleagues in The Hague to plan a cost-efficient and effective mechanism for discharging all necessary residual tasks after the end of the Tribunal's mandate.

On behalf of all of the staff in Arusha and Kigali, I would like to conclude by thanking the Security Council, the Secretariat and Member States for their support of our work. Our close cooperation shows that none of us, on the national and international levels, shall relent in our determination to deny impunity to those responsible for the atrocities committed in Rwanda in 1994. The end of the Tribunal's mandate must not send a signal to the perpetrators that they are safe from justice.

For our part, the Tribunal shall continue its efforts to improve the process and to make it as efficient as possible without compromising the principles of procedural fairness. Our efforts and the Council's cooperation and support demonstrate to the entire world that persons responsible for genocide or other grave violations of international humanitarian law will find no safe haven on Earth, no impunity, no evasion of fair trials and, when the evidence supports conviction, no escape from the punishment their horrendous crimes deserve.

The President: I thank Judge Byron for his briefing.

I now give the floor to Mr. Serge Brammertz, Prosecutor of the International Criminal Tribunal for the former Yugoslavia.

Mr. Brammertz: I am honoured to appear once more before the Security Council to present the report of the Office of the Prosecutor on the implementation of the Tribunal's completion strategy.

In my presentation, I will provide the Council with an update on the work of the Office of the Prosecutor in the following areas: the ongoing judicial proceedings, the cooperation of States, the interaction with prosecution services in the former Yugoslavia and organizational matters.

During the reporting period, prosecution work in trials and appeals has been intense. We are currently prosecuting 26 individuals in seven trials. Two fugitives — Ratko Mladić and Goran Hadžić remain at large. Their arrest today remains the highest priority.

To fulfil the mandate of the Tribunal, they must be arrested and brought to trial as soon as possible.

The cases that are now before the Tribunal are broad and complex. Bringing evidence forward to prove charges of the magnitude contained in our indictments is a substantial undertaking and in every case a major challenge. All cases involve senior political and military figures from the conflict in the former Yugoslavia. Several involve the prosecution of six or more political or military leaders. In one such case, the trial is awaiting judgement. In the two other cases, the prosecution phase is complete and the trial is well into the defence phase. These multiple accused trials can be considered as major achievements and vindication of the use of joinder as one of the key pillars of the Tribunal's completion strategy.

The appeals work in the Office of the Prosecutor continues apace. The Office is currently working on 10 active appeals cases. We expect a marked increase in our caseload in the second half of 2009 after the trial judgements of the multiple accused cases. By then, we expect to have an overall inventory of more than 23 appeals cases.

In the reporting period, my Office has also conducted a number of important contempt cases. My Office prosecuted individuals involved in the divulgation of information about protected witnesses and interference with protected witnesses.

We remain strongly committed to the Tribunal's completion strategy. In all cases before the Tribunal, we have taken steps to present cases more efficiently and expeditiously. We have reduced the scope of the criminal conduct charged, streamlined indictments and submitted evidence in written form, thereby reducing the amount of live witness testimony. We also continue to submit motions proposing to introduce evidence that has already been adjudicated in other trials. As a result, progress has been made in addressing the length of trials and in moving through the Tribunal's trial programme.

While trials and appeals are progressing, I remain concerned about the problems of witness interference, particularly in the form of witness intimidation, which directly affect our ability to present a case in an effective and timely manner. Where appropriate, we have addressed those concerns with the Registry and Chambers. I also ask States in which witnesses reside to continue assisting the International Tribunal in this respect. It is important to create a climate that is conducive for witnesses to testify, and provide the necessary guarantees to witnesses who decide to speak before the Tribunal.

In order to succeed in completing the trial and appeals programme, we still rely heavily on cooperation from the States of the former Yugoslavia and the support of the international community. Cooperation from the States of the former Yugoslavia remains critical in several areas: access to archives and the provision of documents, access to and protection of witnesses and the search for, arrest and transfer of the remaining fugitives.

Bosnia and Herzegovina has continued to grant access to Government archives and to provide the documents requested. We hope that the political and institutional difficulties currently faced by Bosnia and Herzegovina will not negatively impact on the satisfactory cooperation it is providing to my Office today. We also continue to encourage the authorities in Bosnia and Herzegovina to adopt a proactive approach to investigating and prosecuting those that support fugitives evading justice.

Croatia has responded to most requests for assistance from the Office of the Prosecutor. However, we continue to seek access to key documents and archives in the Gotovina case. Over the past year and a half, these specific documents have been at the centre of discussions with Croatian authorities. After several failed attempts to obtain these documents and at the request of the Office of the Prosecutor, the Trial Chamber ordered Croatia to provide a detailed report specifying the efforts undertaken to obtain the requested documents. In response to the Chamber's order, Croatia provided a report and supporting documents. Since my written report, Croatia also provided additional documents requested by my Office, thereby complying, in part, with the Tribunal's order.

However, still at this date, key military documents remain unaccounted for and, in our view, further steps remain to be taken. The matter remains before the Tribunal. As the trial is in progress, it is crucial that the remaining requested key documents be made available immediately.

Since my last report to the Security Council, Serbia's cooperation with my Office has significantly improved. The changed general political environment has led to a more decisive and proactive approach to

cooperation by authorities at the political, judicial and operational levels.

The assistance provided by Serbia during the reporting period in terms of access to archives and the provision of documents has also improved. Serbia has provided timely responses to the majority of requests for assistance and provided significant assistance in the provision of important documents relevant for trials.

Serbia's National Council for Cooperation with the Tribunal has played a key role in this area. Significant improvements have also been achieved as a result of the Serbian authorities recently participating in working meetings with my staff, which has facilitated the identification of relevant documents in their archives. Further cooperation is needed to obtain information in relation to certain important missing documents from those archives that are critical to the cases.

My Office also continues to seek access to certain key military documents in the trial against Momčilo Perišić. In that case, the Trial Chamber has ordered Serbia to investigate and produce a report in relation to the missing documents. Since my written report, Serbia has provided a response, which we are currently reviewing and which may require further follow-up.

The most critical area of cooperation remains the apprehension of fugitives. The arrests of Stojan Župljanin and Radovan Karadzić, carried out by the authorities of Serbia, were important milestones in Serbia's cooperation with my Office. They were the result of improved, effective leadership and coordination between political and judicial authorities, as well as security services.

Agencies in charge of tracking fugitives have stepped up efforts to locate and apprehend the two remaining fugitives, Ratko Mladić and Goran Hadžić. Planning and coordination between the various security services has improved and the authorities are conducting more pro-active, comprehensive and widespread actions to arrest those remaining fugitives.

However, the work of the current authorities is complicated by the need to overcome shortcomings of the previous management of the civilian intelligence services, in particular, their failure to analyse and act upon information obtained in relation to the search for the two fugitives.

During my visit to Belgrade last November, the authorities presented their action plan to search for and arrest the two remaining fugitives. Should these plans be successfully implemented, the analytical capacity reinforced and the necessary political support maintained, additional positive results could be achieved.

I also encourage States and international and regional organizations to continue supporting the States of the former Yugoslavia in their cooperation with my Office.

The transfer of investigative case files and material to competent national jurisdictions and efforts to strengthen the capacity of national jurisdictions remain key components of our completion strategy. We are well advanced in the process of transferring cases and investigation files to the States of the former Yugoslavia. All but one of the ten cases involving 13 accused transferred pursuant to rule 11 bis to the States of the former Yugoslavia have been completed at the trial level. At present, rule 11 bis transfer procedures have been fully used and no further cases appear suitable for transfer.

With regard to the investigative material or category II cases, the Office of the Prosecutor has transferred material involving a total of 15 suspects covering seven municipalities. In 2009, we intend to transfer the last batch of investigative material with some 20 identified suspects to prosecutors in Bosnia and Herzegovina.

During the reporting period, my Office remained actively involved in responding to requests for assistance submitted by national judicial authorities from the States of the former Yugoslavia. In this reporting period, we have responded to a total of 57 requests for assistance.

My Office continues to support efforts to strengthen the capacity of the judiciaries of the States of the former Yugoslavia to deal with war crimes cases at the national level. International support to national courts in States of the former Yugoslavia will remain crucial in the coming months and years. In this context, my Office supports international and national efforts to strengthen the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina. Trials, including trials transferred by the Tribunal could otherwise be jeopardized.

We strongly support the improvement of cooperation in judicial matters between States in the region. Owing to obstacles preventing the extradition of nationals and to legal barriers precluding the transfer of war crimes proceedings among these States, there is a danger that many lower- and mid-level perpetrators of war crimes committed in the early 1990s in the former Yugoslavia will evade justice. To address this impunity gap, these issues should urgently be addressed by all authorities concerned.

Despite efforts aimed at speeding up trials and appeals proceedings, there will be delays in the timelines for current and future trials and appeals. These are principally caused by the recent arrests of Radovan Karadzić and Stojan Župljanin and a number of factors in ongoing cases such as the sickness of the accused, the change of defence counsel and cases proceeding slowly because the accused have elected to represent themselves.

We therefore predict that we will require our current staff levels through 2009. Without the retention of that level of resources, it will be extremely difficult to complete the Tribunal's remaining trials and appeals. A revised budget has therefore been submitted reflecting the projected trial and appeals workload for 2009. We ask that the downsizing process in relation to staffing for trials should not take place before the end of 2009 and into 2010.

To complete this work, we will also need to rely on our dedicated and committed staff members. I therefore once more ask the Security Council and other organs of the United Nations to support measures that will allow identified staff members to stay at the Tribunal until the cases that they are working on are completed.

We will continue to participate in consultation with the President and Registrar in discussions with the Security Council on the establishment of an international residual mechanism.

I would like to express my gratitude for all the support provided by the Security Council to the International Tribunal. Without its assistance, the achievements of the Tribunal would not have been possible.

Your support will remain crucial in this final phase of the International Tribunal's existence in order to obtain the arrest of the two remaining fugitives, Ratko Mladić and Goran Hadžić, but also in order to successfully complete our work. Thank you all very much for your attention.

The President: I give the floor to Mr. Hassan Jallow, Prosecutor of the International Criminal Tribunal for Rwanda.

Mr. Jallow: Since our last report to the Security Council, much progress has been achieved in the implementation of the completion strategy of the International Criminal Tribunal for Rwanda (ICTR) as outlined by President Byron in his report.

Within the past six months, judgements resulting in convictions have been delivered in respect of two accused, with other judgements anticipated in respect of five other accused next week.

A significant development in the trial programme has been the recent conclusion of all the multiple-accused cases, with one exception. In all, this involves some 14 accused persons. The long-running Butare case came to a close in November after seven and a half years of trial, as did the Government case and the Military II case after five years of trial. These cases are now pending judgement, subject to the possible recall of some witnesses.

During the same period, two cases were commenced and are progressing and two indictees, Ngirabatware and Ntawukuriryayo, were transferred to the ICTR for trial during the same period.

Currently, the Office of the Prosecutor at the ICTR is preparing the cases of all the current detainees awaiting trial in order to ensure that their cases proceed in 2009 in accordance with the trial schedule submitted by the President. This will include the retrial of Muvunyi ordered by the Appeals Chamber. My office, the Office of the Prosecutor, is firmly committed to the conclusion of these remaining trials in the course of 2009. We believe that target to be achievable.

Despite the heightened activity of the Tracking Team, no arrests of indictees have been secured in the past six months. There is no indication of any steps taken by the Government of Kenya — other than the earlier seizure of one property — to implement the recommendations of the ICTR-Kenya Police Joint Task Force or the requests of the ICTR in respect of the person and property of Félicien Kabuga. As the Security Council is aware, this matter was referred to it by the Secretary-General in June 2008.

In September 2008, I held consultations with both the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and Government officials in Kinshasa regarding the arrest and transfer to Arusha of some half a dozen indictees who have taken shelter in that territory. The discussions with the Government of the Democratic Republic of the Congo were very positive and encouraging.

The recent round of conflict in the eastern part of the Democratic Republic of the Congo, where the majority of our fugitives are located, has, however, set back the tracking and arrest programme. We therefore continue to appeal to the Security Council to call on all States to cooperate in the arrest and transfer of these indictees, and for appropriate support to be provided to the Government of the Democratic Republic of the Congo by all States, by United Nations agencies and particularly by MONUC in order to enable that country to discharge its obligations.

The demands of peace and justice converge very strongly in the case of the Democratic Republic of the Congo. The continued presence and activities of the ICTR fugitives in the Democratic Republic of the Congo contribute greatly to the conflict and instability in that area. As long as the demands of international justice fail to be satisfied through the arrest and transfer of these fugitives, the demands of peace and stability in the region may continue to elude the international community.

Although the programme for referral of cases of indictees to national jurisdictions for trial continues to be an important element of the ICTR completion strategy, its implementation, particularly regarding referrals to Rwanda, has suffered a number of setbacks. The Security Council will recall that the Prosecutor had filed requests for the referral of five cases — four detainees and one fugitive — to Rwanda under rule 11 bis of the ICTR Rules of Procedure and Evidence. The requests in respect of the four detainees, including the appeals by the Prosecutor in the cases of Munyakazi, Kanyarukiga and Hategekimana have been rejected by the Appeals Chamber.

The Appeals Chamber, whilst acknowledging the independence and impartiality of the Rwandan judiciary, has, however, upheld the rejection of the request by the Trial Chambers, essentially out of concerns that the defence might be impeded in its work by the possible reluctance of defence witnesses to travel to Rwanda to testify and by the fact that defence witnesses may face security problems in Rwanda. As a result of these decisions, the cases of these four detainees and all the thirteen fugitives now fall back within the workload of the ICTR, unless alternative arrangements for trial are made.

This setback has not, however, closed the door to the referral strategy. My office and the Office of the Prosecutor General in Rwanda have held a series of consultations with a view to identifying measures that Rwanda could take in order to meet the concerns of the Chambers. The measures having been identified, we have agreed that, once they are implemented by the Rwandan Government, the ICTR Prosecutor will consider submitting new requests to the judges early in 2009 for the referral of cases to Rwanda.

We intend to keep on trying, because a successful referral programme to Rwanda is important for several reasons: it will cut down on the ICTR trial workload for 2009 and facilitate implementation of the completion strategy; it will enable us to refer the cases of the fugitives and thus end 2009 without any fugitives on our list, except the three who have been earmarked for trial in Arusha. It could also facilitate the extradition of cases of suspected genocidaires from other countries to Rwanda, and thus avoid the creation of an impunity gap in the struggle to bring to justice those who are responsible for these kinds of offences.

In my previous report to the Security Council, I indicated that following investigations by both my office and Rwanda into allegations against some members of the Rwandese Patriotic Front (RPF), the Rwandan Prosecutor General had decided to indict four senior military officers for murder and other war crimes in connection with the killings of several clergy of the Kabgayi parish in June 1994. The trial proceeded in open court in Kigali, under monitoring both by my Office and by other independent observers. It proceeded before a military tribunal. On 24 October, the court convicted two of the officers and sentenced them to 8 years imprisonment, while it acquitted the other two. The Military Prosecutor has advised me that he has appealed both the sentences and the acquittals. I am awaiting the outcome of those appellate proceedings.

Last month, the Office of the Prosecutor at the ICTR hosted a conference of all the Prosecutors of the

Tribunals as well as prosecutors from countries involved in the investigation and prosecution of international crimes, together with representatives of a number of NGOs interested in the subject. The meeting was convened in the context of the increasingly important role of national systems in combating impunity, with a view to sharing information and experiences and creating a forum through which such an exchange could continue beyond the lifetime of the ad hoc tribunals. I must stress that there is much concern amongst the Tribunals and these national prosecuting authorities that there should continue to be timely and effective access for the latter to the Tribunals' information and evidence databases in order to facilitate national investigation and prosecution of international crimes. This is a matter which needs to be taken seriously into account as the Security Council decides on residual and legacy issues for the Tribunals.

The next six months will be a period of intense trial activity at the ICTR. We are all committed to concluding the trials of those detainees currently in hand and to making referral a success in order to enable us to deal with the cases of some detainees, as well as of the fugitives. We do not underestimate the challenge of doing so, particularly at a time when, with completion in sight, we continue to lose critical staff at a difficult time. In less than a year since January 2008, for instance, my Office has lost 20 per cent of its staff. Many more may leave due to the uncertainty about the future. I believe that the adoption by the United Nations of measures to provide incentives to staff whose services are critically required seems all the more urgent now.

I thank you very much, Mr. President, and the members of the Council for your attention as well as for your support for the work of the ICTR.

The President: I thank Mr. Jallow for his briefing.

I shall now give the floor to the members of the Security Council.

Mr. Belle (Belgium) (*spoke in French*): I thank the Presidents and Prosecutors of the two Tribunals for their briefings. Let me also congratulate Judge Patrick Robinson on his election as President of the International Tribunal for the Former Yugoslavia (ICTY) at a challenging time in the life of the Tribunal.

I will not reiterate in any detail my country's attachment to international justice and our strong support to the Tribunals in their endeavours to complete their work within the deadlines decided by the Security Council and to continue to comply with their mission, in appropriate conditions of work, to bring to justice those most responsible for crimes committed in the former Yugoslavia and in Rwanda. These points were made in my delegation's three previous statements and they remain valid.

As regards the cooperation of States with the Tribunals, my delegation welcomes the substantial progress noted by Prosecutor Brammertz concerning the cooperation of the authorities of Serbia with the ICTY. We encourage Serbia to continue its efforts to that end and hope that Mr. Mladic and Mr. Hadzic will be apprehended soon. We encourage all other States involved with the ICTY or the International Criminal Tribunal for Rwanda (ICTR) to enhance their cooperation with the Tribunals, in particular with a view to arresting the fugitives. Cooperation should result from a general commitment and not just from progress achieved now and then. With respect to the ICTY, it is regrettable to note that some form of pressure or other international intervention is often needed in order for cooperation to progress.

Rather, I would like to take this opportunity above all to update the Security Council and the wider United Nations membership on the activities of the Security Council Informal Working Group on international tribunals, which Belgium has had the honour to chair in 2008. In particular, I note the significant progress made by the Working Group on the issue of the establishment of a residual mechanism or of two mechanisms to carry out certain essential functions of the ICTY and the ICTR after their closure.

I call attention to the fact that I will provide a more detailed account in a letter that I will send to the President of the Council and that I will ask to be circulated as an official document of the Security Council.

The Working Group held 29 meetings in 2008. Its discussions were informed by a paper produced jointly by the ICTY and ICTR in March 2007 and revised in September 2007. There was considerable dialogue between the Working Group and the Tribunals throughout the year by means of letters, meetings and video conferences with the principals of the Tribunals

and of a visit to each of the Tribunals by the Working Group at the end of September, as noted by earlier speakers.

The Working Group was briefed by Justice Richard Goldstone, Chairman of the Advisory Committee on Archives, which was established by the Registrars of the Tribunals to advise on the possible location or locations of the archives and related issues. The Goldstone Committee report was received too late in the year for the Working Group to consider it in any detail. The Working Group also had informal consultations with the jurisdiction States — Rwanda and the countries of the former Yugoslavia. The Working Group also exchanged views with the Registrar of the Special Court for Sierra Leone.

During the first part of the year, the Working Group held general discussions of issues raised in the Tribunals' joint paper. As of June, the focus shifted to elements for a possible resolution, drafted by my delegation with the valuable assistance of the Office of Legal Affairs, to which I would like to express my most sincere appreciation. The draft became the basis of intense discussions and passed through three successive versions. While many elements of the draft resolution were agreed, significant areas of difference remain and it will not be possible to finalize the draft before the end of 2008.

The Tribunals' joint paper identified a number of residual functions that might need to be carried out by an international residual mechanism after the Tribunals close. These include the trial of fugitives, the review of judgments, the referral of cases to national jurisdictions, proceedings for contempt, the protection of witnesses, the archives, the supervision of sentences, the prevention of double jeopardy, defence counsel and legal aid issues, claims for compensation, public information and capacity-building, and human resources issues. The Working Group discussed each of these possible residual functions, identifying questions for the Tribunals and considering the answers provided by them.

The focus then shifted to discussion of draft elements for a Security Council resolution. Four areas of early agreement emerged. First, the fugitives must face trial; impunity is unacceptable. The most senior fugitives — those most responsible — must face international trial by the residual mechanism. Secondly, the transfer of cases involving mid- or lower-level inductees to national jurisdictions having jurisdiction to try those cases is an important part of the Tribunals' completion strategies. Thirdly, continuing witness and victim protection was of critical importance. Fourthly, the Tribunals' archives are the property of the United Nations and must be kept under its control.

Successive discussions on the three versions of draft elements of the resolution largely identified the structure of the possible residual mechanism or mechanisms and the need for it or them to continue the legal personality of the Tribunals, although some important differences of view remain. Discussions should continue on those matters, as well as on issues that have not yet been considered in detail, such as the archives. The main questions to consider with regard to the archives relate to their location — whether they should be located in the same place as the residual mechanism — and how confidential materials should be handled, including the question of access to such material.

I would urge the Security Council to seize the momentum created in 2008 to continue the work at the same pace, on the basis of the draft resolution, so that the necessary progress can be made early in 2009.

Belgium was pleased to be asked to chair the Working Group during 2008. We believe it worked effectively under a single rather than a rotating chairmanship. I recommend strongly that again for 2009 a single chairman be nominated to continue the important work.

A great deal of progress has been made in the drafting of a resolution to establish a residual mechanism to carry out certain essential functions and to preserve the legacy of the ICTY and ICTR after the completion of their work. Its basic structure and main purposes are clear. The outstanding questions are clearly identified. With sufficient common ground and political will, a consensus resolution is within reach.

In conclusion, I would like to urge the Security Council to bear in mind the fundamental reason for establishing a residual mechanism: respect for the rights of the victims, of the witnesses, of the accused and of the convicted persons. After two years of intense involvement in this issue, Belgium is more firmly convinced than ever that the international community — through the residual mechanism — must assume responsibility for, at the very least, the trial of

fugitives, the protection of civilians and witnesses, contempt proceedings, monitoring the enforcement of prison sentences, review of judgments and management of the Tribunals' archives.

Mr. Lacroix (France) (*spoke in French*): We would first like to thank the Presidents and Prosecutors of the International Criminal Tribunals for Rwanda and the Former Yugoslavia for introducing their biannual reports. May I specifically congratulate Judge Patrick Robinson on becoming President of the International Criminal Tribunal for the Former Yugoslavia (ICTY).

The Tribunals are at a very delicate moment in their existence: the conclusion of their work. The strategy that the Council established in 2003 and 2004 provided for completion of trials in 2008 and of all work in 2010. Those dates were chosen taking into account forecasts made at the time on how matters would proceed, and they served as a reasonable goal.

Today we know that those deadlines will not be met because of judicial vagaries and procedural constraints, and also because of the late arrest of a number of fugitives. We also note the difficulty of implementing the procedure for transferring lower-ranking accused to national jurisdictions, a procedure that is one of the main elements of the completion strategy. In any event, we are in a situation where trials will not be completed in 2008, and one could fear that all the work will not be completed before 2012.

We know that the Tribunals are working as fast as they can, and we acknowledge their efforts to speed up the work and rationalize trial procedures. Everything must be done to complete the completion strategy as quickly as possible, ensuring, of course, that conditions for a fair trail are always provided. It is for the Council to give the Tribunals the means to achieve that goal, as it did this morning in extending the authorization for the ICTY to recruit ad litem judges beyond the statutory deadline. We expect that similar requests from the President of International Criminal Tribunal for Rwanda (ICTR) will also receive favourable handling. France wishes to ensure that Tribunals have the judicial capacity needed in this difficult time.

It is not yet time to draw up a final balance sheet of what the Tribunals have done, but we can already say that they fulfilled what the Security Council wanted to accomplish when it set them up. Since their creation the Tribunals have embodied the will of the international community to reject impunity for the most serious crimes against humanitarian and human rights law. They have established jurisprudence that can be useful to all jurisdictions that must deal with such crimes. They helped calm the tensions and to restore peace and security in a decisive manner within their respective areas.

Now they have to complete their work. It will not be complete until all the main accused and fugitives have been brought to trial. All States must cooperate fully with the Tribunals to achieve that goal. Recent arrests of Mr. Karadžiž and Mr. Župljanin represented considerable progress for the ICTY, and they were made possible through the cooperation of Serbia. We noted the positive comments by Prosecutor Brammertz on that cooperation, and we trust it will continue so that the last two fugitives — Mr. Mladić and Mr. Hadžić — can be arrested. I wish to recall that full cooperation with the ICTY is an essential element in the stabilization and association strategy for all of the countries of the region, and we call on those countries to give all necessary assistance to the Tribunal. With regard to the ICTR, there are still 13 accused at large. There, too, we urge all States concerned to strengthen their cooperation with the Tribunal and to fulfil their commitments regarding arrest and transfer of indicted persons at large. In particular, we call on the Government of Kenya to do its utmost for the arrest and transfer of Félician Kabuga to the ICTR.

If the problem of fugitives is not resolved before the closure of the Tribunals, it must be resolved within the context of the management of their legacy, for it is simply not acceptable that the closure of the Tribunals would mean impunity for criminals at large. It is one of the principal functions that will be taken over by the residual mechanism that is to be established after that closing. The Council's informal Working Group on the International Tribunals worked for more than a year on that issue, under the very effective chairmanship of Belgium. In that regard my delegation wishes to thank the delegation of Belgium, especially its legal counsellor, Mr. William Roelants, for the remarkable work they have accomplished. I also wish to thank the Presidents, Prosecutors and Registrars of the two Tribunals for the excellent cooperation they established with the Working Group, particularly during its recent visit, in autumn.

The Security Council is already able to indicate several points of agreement on the management of residual functions, among the first of which is bringing

to international justice fugitives bearing the heaviest responsibility. That requires a mechanism that can reconstitute the capacity to try those individuals once they have been arrested. It is established that the mechanism, which will be within the United Nations, is to be compact, temporary and effective, as well as economical. Protection of victims and witnesses and the judicial management of the archives will be among the functions of the mechanism. We believe it will also have to supervise the carrying out of sentences imposed by the Tribunals and review contempt proceedings. Despite the progress achieved, the situation is not yet ripe for adoption of a resolution by the Security Council on this matter, but it is our hope that the Working Group will be able to move quickly toward resolving the major difficulties.

It is essential that the Security Council take the necessary steps to ensure the integrity and the permanence of the legacy of the Tribunals. The administration of justice will not end with the Tribunals. The management of their residual functions must be equal to the demands of equity and justice that governed their creation.

Ms. DiCarlo (United States of America): My delegation welcomes Presidents Robinson and Byron and Prosecutors Brammertz and Jallow to the Council today and thanks them for their continued work to fight impunity. We congratulate Judge Robsinson on his election as President of the International Criminal Tribunal for the Former Yugoslavia (ICTY). We would also like to commend the judges, prosecutors and staff of the ICTY and the International Criminal Tribunal for Rwanda (ICTR) for their diligence and dedication to the work of the Tribunals.

The United States recognizes the many accomplishments of the Tribunals and we acknowledge in particular the recent arrests of Radovan Karadzic and Stojan Zupljanin and the commencement of proceedings in their cases. We urge the Tribunals to continue to implement their completion strategies in order to fulfil their ultimate mandate of bringing to justice those responsible for crimes in the former Yugoslavia and Rwanda.

We note the difficulties that the ICTR faces in transferring the cases of indictees to national jurisdictions and we urge the international community to reaffirm its commitment to strengthening the domestic judicial capacity of Rwanda. We commend the domestic prosecutorial and judicial efforts to ensure accountability for crimes committed in the Balkan wars, which is critical to the long-term stability of the region.

We want to stress once again that the fugitive indictees must be brought to justice. We cannot allow individuals who have been indicted by the ICTY and ICTR to enjoy impunity simply because they outlast the Tribunals. It must be clear to them and to those who support them that such a strategy will not succeed.

Accordingly, the United States urges the international community to work diligently towards securing the arrest of the 15 individuals indicted by the ICTY and ICTR who remain at large. We also call on States to fulfil their legal obligations to cooperate fully with the Tribunals. We are encouraged by recent cooperation between the ICTR and the Democratic Republic of the Congo in tracking fugitives, but greater cooperation is needed.

We are troubled, however, by the lack of urgency of the Kenyan Government to act on reports that ICTR fugitive and alleged genocide financier Félicien Kabuga continues to have links to Kenya. We urge Kenya to act immediately on the Tribunal's recommendations and take additional steps to deny Kabuga access to his networks of support.

Concerning the ICTY, we applaud Serbia for the arrest and transfer of Radovan Karadzic. The remaining fugitives, Ratko Mladić and Goran Hadžić, must also be apprehended, and we call on Serbian authorities to do everything in their power to locate and arrest these individuals. A resolution of their cases is critical for stability and reconciliation in the Balkans. We also wish to stress the importance of all countries fully cooperating with the ICTY, and we note with concern Prosecutor Brammertz's report that the prosecution has not yet received key documents for the Gotovina trial, despite some encouraging steps taken by the Croatian Government.

We urge the authorities in Bosnia and Herzegovina, Croatia and Serbia to continue to work closely with the ICTY and their Governments to fulfil all of their responsibilities relative to the Tribunal. In addition, we urge the national authorities in the region to work closely with each other so as to enhance information-sharing, to facilitate the transfer of war crimes proceedings between States, as appropriate, and

to consider revisions to laws so as to allow the extradition of nationals charged with war crimes.

The United States thanks Ambassador Grauls and the Belgian delegation for their work as Chair of the Informal Working Group on criminal tribunals. We look forward to working with Council members to complete the task of establishing a residual mechanism that ensures that no war criminal from these conflicts enjoys impunity and that ensures the Tribunals' legacy while allowing for their efficient and successful closure.

Finally, we would like once again to thank the Presidents, Prosecutors, judges, registrars and staff of the Tribunals for their good work and for their efforts to end impunity for these crimes.

Mr. Gouider (Libyan Arab Jamahiriya) (*spoke in Arabic*): We welcome the presence of the two Presidents of the International Criminal Tribunals, Judges Patrick Robinson and Dennis Byron, and the two Prosecutors, Mr. Serge Brammertz and Mr. Hassan Jallow. We thank them not only for their comprehensive briefings but also for the exceptionally excellent work they have carried out with the assistance of their staff.

The two reports of the Tribunals and today's briefings, in addition to the report on the completion strategy, are rich in detail concerning the activities of the two Tribunals. These activities have shown considerable progress in the implementation of the completion strategy within the prescribed deadlines, in accordance with the instructions of the Security Council, and with due attention to fair trial proceedings and respect for the rights of the accused.

Undoubtedly, the failure to arrest some accused persons and the continued impunity of those who committed genocide and grave violations of international humanitarian law are a cause for legitimate international concern. However, this regrettable reality should not prevent us from implementing the completion strategy within the set deadlines.

The Security Council has urged States to cooperate with the two Tribunals. The two reports reflect noticeable progress in the cooperation of the concerned States in tracking the fugitives, extraditing those who have been indicted and resettling those who have served their sentences or been exonerated.

We welcome the reference in the two reports to the cooperation and assistance of the concerned States with the two Tribunals, particularly the Republic of Rwanda and the States of the former Yugoslavia. The issue requires ongoing international cooperation and the provision of material and human resources in order to enable the two Tribunals to discharge their mandate.

The Council has also stressed the importance of enhancing national jurisdictions in Rwanda and the States of the former Yugoslavia. We call for further efforts to strengthen national jurisdictions in order to enable them to pursue the work of the two Tribunals. We believe that such strengthening is in line with efforts to refer as many remaining cases as possible to national jurisdictions and with the principles of fair trial proceedings, equality and strengthened rule of law in the concerned States. It also ensures that problems relating to national jurisdiction can be overcome to allow States to take possession of archives that are important to their history and national reconciliation.

The circumstances have changed since the two Tribunals were established at the end of the last century. Laws and institutions in the States where the crimes were committed have also changed. There is now a great deal of evidence and many available witnesses, which makes it possible for national jurisdictions to address remaining cases with professionalism and with the assistance and support of the international community.

The desire to see progress in the Tribunals' efforts to carry out their respective completion strategies makes it incumbent upon us to decide upon their legacies as soon as possible. In that connection, we would like to express our particular appreciation for the efforts made by the Informal Working Group chaired by Belgium. We look forward to the outcome of that work and to the establishment of an international mechanism to effectively and efficiently ensure their legacies after the Tribunals conclude their work.

Mr. Terzi di Sant'Agata (Italy): I wish to join other delegations in thanking Presidents Robinson and Byron, as well as Prosecutors Brammertz and Jallow, for their presentations to the Council. I also wish to congratulate President Robinson on his recent election and to wish him every success on his future endeavours. Let me also take this opportunity to commend the work of Fausto Pocar as President of the

International Criminal Tribunal for the Former Yugoslavia (ICTY) over the past three years. Under his leadership, the ICTY was able to reach very high standards of efficiency, in full respect of the principle of fair trial.

Italy welcomes the tangible progress made in pursuing the completion strategies through the strong commitment of the Tribunals, the judges, the prosecutors and the entire staff. However, we are somewhat concerned about the fact that achieving the completion strategies will be delayed. Of course, that has been largely due to objective factors, the inability to ensure the prompt arrest and surrender of defendants, obstacles in judicial cooperation and other reasons. We believe that, rather than discussing the past, it is now time to look ahead and to try to ensure the smooth conclusion of judicial activities, in keeping with the best standards of fair trial and due process.

At the same time, the Council should underline that cooperation is essential for a truly successful completion. In that regard, cooperation with the Tribunals has largely improved recently. Still, it is a bit frustrating to see that difficulties remain after so many years. Cooperation must become a resolute practice.

Under the presidency of Judge Byron, the International Criminal Tribunal for Rwanda has endeavoured to improve its ability to respect the completion schedule. It also has ambitious plans to complete trials during 2009. But regrettably, further delays seem unavoidable at this stage. Nonetheless, we are confident that the Tribunal will continue to do its best to keep delays to a minimum. We will carefully consider the proposal made today by President Byron.

We are confident that both Tribunals will make every effort to finalize pending cases and facilitate judicial activities on appeal. At this juncture, it is important to make appropriate plans to assure that the Appeals Chamber is granted the necessary staff and resources.

In our view, it is also essential to strengthen capacity-building in the countries most directly concerned, both in terms of the judiciary and outreach. Support through the international community would be more than welcome, including by strengthening States' judicial capacity to conduct criminal trials for international crimes. In that regard, Italy commends the assistance given to the ICTY by the United Nations Interregional Crime and Justice Research Institute and the Organization for Security and Cooperation in Europe, as mentioned in the report (see S/2008/729) of the President of the ICTY.

We would like to note that the Tribunals' legacies must remain under the Council's consideration. In numerous meetings of the Informal Working Group on international tribunals, chaired by Belgium, delicate issues have been discussed pertaining to the aftermath of the completion strategies. In that regard, we believe that the obligation to try fugitives should remain a clear duty of the international community. With the active contribution of the Council, important decisions should be adopted in a timely manner to reaffirm the purpose for which the Tribunals were established: bringing to justice those responsible for the most heinous international crimes in the territories of the former Yugoslavia and Rwanda.

Lastly, we would like to thank Ambassador Grauls and the Belgian delegation for having efficiently chaired the informal working group on international tribunals. The activities of the group have paved the way for the legacy of the Tribunals.

Mr. Suescum (Panama) (*spoke in Spanish*): Allow me, first of all, to thank the Presidents and Prosecutors of the two International Tribunals for the briefings they gave us this morning.

The work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) is at a crucial stage. Both must complete trials at first instance by the end of 2008, less than three weeks away, while finalizing all their work in 2010. My delegation would like to acknowledge the enormous commitment demonstrated by the staff of both Tribunals with regard to the goals set out in the completion strategies. Nevertheless, we must be realistic and acknowledge that the vast amount of pending work could have a significant impact on the deadlines that have been established.

With regard to the International Criminal Tribunal for Rwanda, we are concerned about the number of obstacles impeding some trials from being referred to national judicial authorities, especially those relating to procedural guarantees and witness protection. We are also concerned that 13 accused persons are still at large, including Félicien Kabuga. States with information on those persons should honour their obligations to cooperate with the Tribunal. Failure

to cooperate could directly compromise the Tribunal's goals and legacy in the Great Lakes Region.

It is clear that the workload of the International Criminal Tribunal for the Former Yugoslavia has increased in the past year. The Security Council has reacted correctly in adopting this morning's resolution extending the mandates of judges and allowing for the appointment of additional ad litem judges. Despite those measures, it appears unlikely that the Tribunal will be able to carry out its completion strategy in the time frame that has been set.

On a positive note, however, we wish to underscore that Radovan Karadzic has been arrested and delivered to the Tribunal authorities. Once again, we recognize the work carried out by the Serbian authorities in this context and we encourage Serbia and other States of the region to continue such cooperation and to focus their efforts on ensuring the capture of Ratko Mladić and Goran Hadžić.

The Security Council Informal Working Group on international tribunals has worked throughout this year to establish the parameters for an international mechanism to take on those residual issues which will be pending once both Tribunals have ceased to function. The ongoing dialogue with the authorities of both Tribunals has been decisive in the progress achieved so far. On behalf of my delegation, I would like to thank them for this important cooperation. We would also like to acknowledge the work of Belgium as chairman of the Informal Working Group and to thank Belgium for its generosity which has made it possible for the Working Group to visit the offices of the Tribunals in Arusha and The Hague. The exchanges that will be possible during those visits will undoubtedly be of great value in this regard.

The correct application of justice is an ongoing process which does not end with a judgment or with the conclusion of a trial. In particular, in dealing with residual issues and without wanting to undermine any of those issues listed by the representative of Belgium in his statement today, this Council must ensure that adequate protection is guaranteed to both victims and witnesses, that sentences are duly served and that post-sentencing judicial process is followed. The eventual success of the Tribunals will be measured by the legacy they leave to those national authorities which succeed them. For that reason, it is crucial that public access to the archives be guaranteed.

Finally, the lack of human and material resources cannot be allowed to compromise the objectives of the Tribunals. We consider it a matter of utmost importance to pay attention to the considerations and concerns expressed by both Tribunals and reiterated today by both Tribunal Presidents with regard to the retention of experienced staff. We recognize and welcome the measures taken so far by the Secretariat in this regard and we urge that necessary additional measures be taken to allow the Tribunals to efficiently and effectively complete their work.

Mr. Kafando (Burkina Faso) (*spoke in French*): I should like at the outset to thank the Presidents and Prosecutors of the two Tribunals for their presentations and, in particular, to congratulate Judge Robinson. I would also like to thank the delegation of Belgium for its report on the work of the Informal Working Group on international tribunals. We are particularly grateful to Ambassador Grauls for the leadership and energy that characterized the Belgian Chairmanship of the Working Group.

Burkina Faso attaches great importance to the work of the special Tribunals for the former Yugoslavia and Rwanda, which were established by the Security Council to combat impunity and to provide justice for the victims on behalf of the international community. We have taken note of the reports before us and we would like to express our appreciation to those primarily responsible for the practical steps taken as part of the Completion Strategy in facilitating the swift and harmonious management of trials, as well as the efficient utilization of judges and personnel. These efforts must be acknowledged and encouraged. We are also grateful to the staff of the Tribunals for their dedication.

The reports that have just been presented to us make it clear that the Chambers will be very busy in the coming months. In the case of the International Criminal Tribunal for Rwanda (ICTR), for example, the commencement of ten new trials is planned. This single example demonstrates clearly the significant challenges awaiting these two institutions, which share the same Appeals Chamber, in light of the timeframes they have been assigned to complete their work. Given such an outlook, in order to enable the ICTR to continue with its current level of activity, my delegation reiterates its support for the three-part request made by the President of the ICTR for an increase in the number of ad hoc judges; that a

chamber be made up exclusively of ad hoc judges; and for the possibility that judges who are retiring be authorized to finalize their judgements from their country of origin without being involved in new cases.

With regard to the question of the timeframe for completion, which is closely linked to progress being made in trials under way and the volume of work to come, Burkina Faso is of the view that the Security Council, through the Working Group on international tribunals, should be realistic and flexible because, in practice, it will be impossible to meet the deadlines set in Security Council resolution 1534 (2004).

With regard to the matter of cooperation with the Tribunals, including in the pursuit and arrest of fugitives, we commend those States which have shown themselves willing to assist the Tribunals pursuant to resolution 1534 (2004). We welcome the agreements the Tribunals have been able reach with certain States, specifically with regard to the respect of sentences and protection of witnesses. We appeal to all other States, in particular those in the subregions involved, to cooperate actively with the Tribunals, particularly in the pursuit and arrest of fugitives.

We encourage both Tribunals to continue with their completion strategies, bearing in mind the time factor. At this point, there should be consideration of referring cases to national jurisdictions and stepping up efforts to locate fugitives.

In conclusion, my delegation would like to urge the international community to continue supporting the work of these two Tribunals. The Security Council in particular must give them all the support they need to complete their work. In the belief that justice and the search for international peace and security are shared responsibilities, Burkina Faso reaffirms its commitment and its readiness to make its contribution to combating impunity and we to support all efforts being undertaken to that end.

Mr. Hoang Chi Trung (Viet Nam): My delegation wishes to thank the Presidents and Prosecutors of the two International Criminal Tribunals, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), for their briefings before the Council on the activities that the two Tribunals have undertaken in the last six months to implement their completion strategies, pursuant to resolutions 1503 (2003) and 1534 (2004). We take note of the reports of the Tribunals in this regard.

The reports of both Tribunals show that they will be facing challenging workloads in the coming two years. Although both Tribunals have made efforts to speed up trials, it seems that neither will be able to meet the timelines set by the Security Council for the completion of their work.

We share the assessment of the Tribunals that it is important to have adequate measures to retain the Tribunals' qualified judges and staff. We also believe that, besides trying to improve the expeditiousness of the Tribunals' proceedings, further efforts should be made to refer cases to national jurisdictions. Viet Nam will continue to join other members of the Council in efforts to render necessary support to the Tribunals for the achievement of their completion strategies.

International cooperation plays a crucial role in the fulfilment of the Tribunals' mandates, particularly in the apprehension of the remaining fugitives. My delegation notes with appreciation the efforts of the Tribunals to obtain the cooperation of States and organizations involved in cases, as well as the cooperation already shown to the Tribunals. We express, however, our concerns over the cases for which cooperation has been insufficient, as mentioned in the Tribunals' reports.

The Vietnamese delegation is of the view that determined efforts on the residual mechanism and its functions will help to ensure the success of the Tribunals' completion strategies. We need to have the residual mechanism in place and ready to operate when the Tribunals close their doors so that impunity is not allowed and the legacy of the Tribunals will be protected. My delegation, therefore, appreciates the work done in 2008 by the informal Working Group of the Council on the international criminal tribunals under the chairmanship of Belgium. We also welcome the inputs provided by the Tribunals to facilitate the discussions of the Working Group.

My delegation is not discouraged by the fact that the Working Group has not been able to finalize its work in terms of a Council resolution on the residual mechanism. That shows how complicated the issue is and that members of the Council are committed to ensuring thorough discussion of the issue.

Finally, let me reiterate our firm commitment to working constructively with other members of the Council to ensure a smooth and effective completion of the Tribunals' work.

Mr. Natalegawa (Indonesia): First of all, my delegation wishes to join previous speakers in welcoming the Presidents and Prosecutors of both Tribunals to the Council and in thanking them for their comprehensive briefings on the progress of the implementation of the completion strategies of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Let me also use this opportunity to reiterate our continued support to the effective contribution of the ICTY and ICTR to bringing to justice those responsible for crimes against humanity in the former Yugoslavia and in Rwanda.

My delegation, like others, underscores the importance of the completion strategies to the performance of the ICTY and ICTR in their final phases. In that regard, Indonesia notes with appreciation that various concrete measures have been taken to implement the completion strategies and significant progress has been achieved towards completion of the work of the two Tribunals. We also welcome their joint efforts to ensure their legacies after the completion of the mandate and the work of the two Tribunals.

We also note that the current and upcoming workloads of the Tribunals are exceptionally high. We therefore welcome their continued endeavours to achieve greater efficiency in their work by exploring further ways to expedite proceedings while respecting the rights of the accused.

My delegation recognizes that naturally there will be some functions of the Tribunals that will remain in place following completion of their work. The Council, in our view, needs to consider a temporary international mechanism for addressing all residual functions, particularly those related to the fugitives at large, transfers of cases to national jurisdiction, witness protection, sentence supervision and archives. Such a mechanism, which would address the necessary residual functions that should be retained, should be small, temporary and efficient.

My delegation would like to specifically acknowledge that the informal Working Group on the tribunals chaired by Belgium has successfully achieved some areas of agreement in identifying the residual functions and their possible solution. We also note that the Working Group has reached significant progress in the drafting of a Security Council resolution. It is indeed our hope that there will be adequate common ground for the Council to speed up the finalization and adoption of that draft resolution.

To conclude, my delegation, once again, would like to reassure both Tribunals of its full support and cooperation towards ensuring that their mandates are fully discharged, including the implementation of their respective completion strategies. We would also like to express our appreciation for the contributions of the two Tribunals to bringing those responsible to justice.

Mr. Rogachev (Russian Federation) (*spoke in Russian*): I would like to thank the leadership of both Tribunals for their briefings and for the reports on the completion strategies of the two Tribunals submitted to the Security Council under resolution 1534 (2004) (S/2008/726 and S/2008/729).

This meeting is being held just before the beginning of a new year — 2009 — when, under resolutions 1503 (2003) and 1534 (2004), the Tribunals are supposed to complete consideration of cases at the first instance. Unfortunately, that expectation is simply not realistic. The time frames for completion forecast by the Tribunals are constantly shifting. The report of the International Criminal Tribunal for Rwanda (ICTR) (S/2008/726) sometimes gives some kind of justification or explanation of the situation, but in the case of the International Criminal Tribunal for the Former Yugoslavia (ICTY) report (S/2008/729), by no means all of the aspects of that matter are commented on.

One key element for carrying out the completion strategy is the transfer of cases by the ICTY and the ICTR to national judicial organs. We welcome the efforts being made in that area by the ICTR. Although the Tribunal has taken a number of decisions declining to transfer arrested persons, citing the inadequacy of legislation in Rwanda, we feel that the possibilities there are far from being exhausted. The Tribunal could be invited to work more actively with the Rwandan authorities to improve their national legislation, so that transfer of accused persons to the Rwandan judiciary could become a reality. Moreover, the possibility of transferring cases to third countries that might be ready

and able to hold trials of accused persons should not be excluded.

It is the understanding of my delegation that the ICTY has suspended, for the time being, the transfer of accused persons to national jurisdictions. One important element of the work of the Tribunals is that there be a high level of cooperation with States of the former Yugoslavia and Rwanda. We have noted the references in the ICTY report to Serbia on that matter, which show clearly how seriously Serbia takes the matter of its cooperation with the Tribunal. This involves providing access to documents, seeking accused persons and protecting witnesses. In that connection, we feel that the relevant sections of the ICTY report might have been worded in a more positive tone.

In conclusion, I will just comment on the matter of the establishment of an international mechanism to carry out residual functions of the ICTY and ICTR. We hope that the Council will soon be able to reach agreement on a document setting forth the key parameters for such a mechanism, namely, that it be small, financially efficient and temporary.

In that connection, my delegation thinks that it is important that the Security Council be more actively involved in the implementation of the completion strategy. It would seem that, without the assistance of the Security Council, the Tribunals will find it difficult to complete their work within realistic time frames. In any event, it would seem time for the Security Council to shoulder the full responsibility it assumed in connection with the establishment and the functioning of the two Tribunals.

Ms. Pierce (United Kingdom): I would add our voice to those of colleagues around the table who have thanked the Presidents and Prosecutors of both Tribunals for their presentations. I would like to join others in congratulating in particular Judge Patrick Robinson on his election as President of the International Criminal Tribunal for the former Yugoslavia (ICTY) and extend a welcome to him on his first appearance before the Security Council.

I would like to begin, if I may, by commending both Tribunals for their continued efforts to implement their completion strategies. It is regrettable that the projected dates for completion of the Tribunals' work indicate that the 2010 deadline set out in the completion strategies will not be met. Nevertheless, we do recognize the hard work and commitment of Tribunal staff and acknowledge that the slippage in completion deadlines is in part due to factors outside their control, such as the late transfer of fugitive indictees and difficulties in obtaining access to key evidence.

Therefore, my Government urges both Tribunals to continue their efforts to complete their work as speedily as possible, consistent with the interests of justice. We congratulate them on the measures that they have taken to reform their internal procedures in order to expedite their work further, and we encourage them to explore any possibilities for additional reforms. In the case of the International Criminal Tribunal for Rwanda (ICTR), we would encourage the Tribunal to work closely with Rwanda to facilitate the transfer for national prosecution of lower-level cases.

A number of speakers this morning have referred to the question of transfer to national jurisdiction. I would just like to set out the United Kingdom's view on that subject, which is that it is suitable, whether in the case of the ICTR or the ICTY, for lower-level cases. It is absolutely not suitable for the highest-level fugitives, including Mladić.

The full and active cooperation of States is essential to enable the Tribunals to complete their work. We would like to take this opportunity once more to remind all States of their obligation to cooperate with the Tribunals under Security Council resolutions 1503 (2003) and 1534 (2004).

A number of speakers have also referred to the arrest of Radovan Karadzic. That arrest, together with the arrest of Zupljanin, was a milestone for the ICTY, and their capture was the result of the coordinated efforts of key authorities in Serbia. My Government applauds this success, and we salute those modernizers in Serbia who have brought this change about. We also welcome the Prosecutor's assessment in his report that Serbia has made substantial progress in cooperation since the last report. We urge Serbia to step up this cooperation in the areas that the Prosecutor has identified, and obviously and in particular, to increase efforts to locate and capture Ratko Mladić and Goran Hadžić. I just want to stress that this will mean needing to ensure that each and every part of the relevant Serbian bodies are doing their utmost and are tasked to do their utmost to this end.

Turning to the case of Croatia, we also applaud the work in 2005 that went into the arrest of one of the high profile indictees, Gotovina. We recognize that the majority of requests for assistance have been met, as the Prosecutor has said, but we do regret that Croatia has been unable to provide all the documents sought by the Prosecutor related to the Gotovina trial. We welcome the fact that, since the report was written, the Croatian authorities have recently provided additional material, but it is also true that key documents remain untraced or unaccounted for. We strongly urge Croatia to redouble its efforts to meet the Prosecutor's requirements. Cooperation with the Tribunal is not only mandated by this Council under its Chapter VII resolutions, but it is also a key condition for all the countries of the western Balkans for their successful integration into the European Union.

Turning to the ICTR fugitives, it is an issue of concern to us that so many individuals remain at large. We are disappointed in particular that there has been no significant progress in tracking the whereabouts of Félicien Kabuga. We urge Kenya and other States in the region to cooperate fully with the ICTR's efforts to secure the arrest and surrender of the fugitive indictees. It is vital that all remaining fugitive indictees from both Tribunals be brought to trial.

As we approach the end of the completion strategies, it is important to focus on preserving the legacy of the Tribunals for future generations. We commend the work of the Tribunals and the international community to strengthen the capacity of domestic judicial institutions in the regions. A high priority is to reach agreement on the establishment of a residual mechanism, which will be necessary to carry out certain essential functions of the Tribunals in the post-completion phase. These functions include the prosecution of remaining indictees, the protection of witnesses, the enforcement of sentences and the management of the Tribunals' archives to ensure the widest possible accessibility.

I would like to join others in thanking Belgium today for driving this work forward, as Chair of the Security Council Informal Working Group on international tribunals. We have made some progress, but there is much more work to be done. It is important that we maintain the momentum on this issue with a view to the adoption of a resolution in the coming months.

Finally, I would like say for the record that we associate ourselves with the statement made by the representative of France on behalf of the European Union. I would also like to commend those European Union and NATO forces that have been helping in the search for the fugitive indictees in the Balkans.

Mr. Maqungo (South Africa): On behalf of my delegation, I would like to congratulate Judge Patrick Robinson on his election as President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and to thank him for his statement to the Council. I also wish to thank Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (ICTR), for his statement to the Council. We are also grateful to the Tribunals' respective Prosecutors — Mr. Serge Brammertz and Mr. Hassan Jallow — for their statements. We would also take this opportunity to express our gratitude to the Tribunals for having received the Informal Working Group during its visits to The Hague and Arusha, Tanzania.

The two ad hoc Tribunals established by this Council have made an important contribution to the maintenance of international peace and security. They have brought to justice persons responsible for serious violations of international humanitarian law, rendered justice to the victims of international crimes and are an important factor in the restoration of peace and stability in their respective jurisdictions. The significant achievements of the Tribunals have clearly proven that peace and justice are complementary and mutually reinforcing.

My delegation commends both the ICTY and the ICTR for the efforts that they are making to ensure that they fulfil their completion strategies. In particular, we commend ICTR for the dutiful steps it is taking to complete the evidence phases of all its trials with the aim of meeting the target date of 2009.

My delegation takes note of the information that several permanent judges of the ICTR may retire to take up positions in their national systems. We are eager to ensure that cases currently being tried are not interrupted and that these trials be brought to full adjudication. Keeping in mind the target date of 2010 for the Tribunal to complete all of its work, my delegation therefore supports the International Criminal Tribunal for Rwanda's proposal to continue to engage the departing judges remotely for the purposes of writing judgements.

Furthermore, we support the proposals to make maximum use of ad litem judges by assigning them to cases without the requirement of the presence of permanent judges and to increase the number of these ad litem judges as necessary to ensure that the completion strategy is eventually met. We recognize that these steps will require amendments to the statute and the rules of procedure and look forward to receiving the proposed amendments from the Courts.

The completion strategy is time bound and, therefore, we find it imperative that imaginative steps be taken in order to meet the deadline and realize our goals of completing all the work of the Court by 2010. My delegation urges the Tribunals to continue to identify further reforms to complete their work as efficiently and promptly as possible.

We remain, however, disappointed at the decision of the appeal division to deny the request of the Prosecutor of the ICTR to refer some of the outstanding cases to Rwanda. We are, however, encouraged at the cooperation between Rwanda and the Office of the Prosecutor following the decision of the Appeals Division and hope that, eventually, all of the concerns expressed by the Appeals Division shall be resolved and that referrals to Rwanda shall occur sooner rather than later. We view referrals to national systems as central to achieving the completion strategy.

In both the ICTY and the ICTR, there are indicted persons still at large and some of them are of a particularly high-level and are accused of holding the greatest responsibility in the perpetrating of international crimes. Ideally, they should be tried at an international level by an international court. It is important that these fugitives be arrested and brought to justice and we therefore call upon the cooperation of all States, in particular the States that have been mentioned in the report, to surrender these fugitives to the Tribunals.

The ad hoc Tribunals were established as efforts to maintain international peace and security and, as they now complete their work, it is important that they leave a legacy that affirms the national justice systems of the territories Rwanda and the former Yugoslavia. It is for that reason that my delegation strongly supports referrals to these national systems.

Much work has already been done by the informal working group of the Security Council on the Tribunals under the able chairmanship of Belgium. We take this opportunity to thank Belgium for their leadership and for having made the trip to the Tribunals possible.

It is important at this stage that this work that has been done by the informal working group be placed in an official report of the Security Council so that the incoming members of the Council can build upon what has already been done.

Mr. Weisleder (Costa Rica) (*spoke in Spanish*): I would like to thank you, Sir, for having convened this important meeting and, at the same time, I wish to say how pleased my delegation is to have Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) here with us, and I congratulate him on his recent appointment and the discharging of his functions.

We also welcome Judge Dennis Byron, President, International Criminal Tribunal for Rwanda (ICTR), Mr. Serge Brammertz and Mr. Hassan B. Jallow, both Prosecutors for the International Criminal Tribunals.

Costa Rica welcomes the very informative and detailed content of the briefings on the present situations of the trial activities and we recognize efforts aimed at complying with an orderly completion strategy in accordance with Security Council resolutions 1503 (2003) and 1534 (2004).

However, we note that given elements beyond the control of both Tribunals, it is possible that their trial activities will not conclude in 2008 as planned and that some trial-related activities may even continue through 2011 or 2012. Our delegation continues to believe it important for both Tribunals to redouble their efforts so that the extension of this time frame is as brief as possible.

Obviously this appeal for them to redouble their efforts cannot and must not be to the detriment of the rights of the accused to receive fair trials with a maximum of existing judicial safeguards in place, based on the Tribunals' respective statutes.

Since the initial report on the completion strategy, the members of the Council have appealed to the international community to continue to cooperate with the Tribunals and to facilitate compliance with their respective mandates.

In this regard, we would like to recognize the efforts of those individuals, institutions and sectors in

Serbia which made it possible for two fugitives of the ICTY to be apprehended and handed over, including Radovan Karadzic. The most cruel and inhumane crimes such as genocide, war crimes and crimes against humanity must not go unpunished. Costa Rica urges the international community to provide all information at their disposal in order to collect data leading to the arrest of fugitives of both Tribunals and to bring them to international justice as soon as possible.

Similarly, we would underscore the importance of activities aimed at bolstering the capacity of the respective national justice systems in order to increase the number of transfers to national jurisdictions and that elements which, to date, have led the Tribunals to reject those transfers, be set aside in the near future. The purpose of this would be that, simultaneously, the international community could find justice while ensuring the most efficient trial process in these national jurisdictions.

In referring to the legacy of both Tribunals and their possible residual functions, we would like to point out that our delegation believes that any mechanism which is selected must be substantially minimized and considerably less burdensome.

In any event, it is particularly important for my delegation that the high-level individuals presumed guilty, many of whom are still at large, be judged by these international Tribunals and that the perpetration of such atrocious crimes not go unpunished.

We recognize and we are grateful for the valuable work done by the Belgium delegation and we recognize their dedication, as Chair of the Security Council Informal Working Group in 2008, to guiding the numerous related negotiations to a safe harbour.

I should like also to refer briefly to the question of the archives for both Tribunals. This is a very important aspect of the future residual mechanisms. These archives are not only important for the trials which are under way in national jurisdictions, thanks to the transfers made by the Tribunals, but they also represent the most valuable legacy for the international community in its efforts to combat impunity. This demonstrates once again that only through justice can we ensure lasting peace and that both elements are mutually complementary and beneficial.

In conclusion, my delegation believes that this Council must hear the opinions of countries of the region prior to taking a final decision on the location of the archives. It is essential that the ultimate solution reconcile the interests of all interested parties in the region, the international community in general, and above all the victims and their survivors.

Mr. Liu Zhenmin (China) (*spoke in Chinese*): I would like to thank President Robinson and Prosecutor Brammertz for their briefing on the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY). I would also like to thank President Byron and Prosecutor Jallow, on the behalf of the Chinese delegation, for their briefing on the work of the International Criminal Tribunal for Rwanda (ICTR).

We have noticed that, during the past year, the work of the two Tribunals has continued to progress. We appreciate the efforts of the two Tribunals to implement the completion strategy. We also appreciate the support provided by the relevant countries in this respect.

Since the start of the completion strategy, the two Tribunals have worked to improve their working methods and procedures to accelerate their work. These efforts deserve our recognition. However, as we approach the first deadline for the completion strategy, neither Tribunal has been able to complete the trials of all the cases on schedule. We do not believe that either Tribunal desires this outcome. While we can understand the pressure that the two Tribunals face, we hope that it will motivate them to speed up and be more effective in their future work.

On the one hand, the Tribunals should continue to explore the possibility and feasibility of improving their working methods and make full use of all the available resources to enhance the efficiency of trials and do what they can to avoid delays for any reason; on the other, the Tribunals should continue to transfer cases to the national jurisdictions concerned, which is also a core element of the completion strategy. All work concerning the transfer of cases and fugitives should be strengthened and be given priority.

The issue of the legacies and residual tasks of the Tribunals is already on the agenda. The Security Council's Informal Working Group on international tribunals has been working on this issue for a year and has made some progress. During this process, the

Tribunals have issued several commentaries on this matter. In particular, this autumn they invited the Informal Working Group for a visit for an important face-to-face exchange of views. While we welcome the participation of the two Tribunals in studying the relevant issues, we also believe that the question of legacies and residual tasks should be studied and settled in a pragmatic manner.

In this regard, while the difficulties of the issues and the work involved should not be minimized nor dismissed, neither they nor the workload should be exaggerated. On this basis and on the basis of the schedule of the completion strategy, solutions should be arrived at judiciously in a feasible, economic and proper manner.

I would like to take this opportunity to thank my colleague from Belgium for his efforts in chairing the Security Council Informal Working Group.

We expect that the two Tribunals will continue towards the target of the completion strategy set by the Security Council and make further efforts to reach this target. During this process, we are prepared to consider any feasible or reasonable proposal for the speedy realization of the completion of the strategy.

The President: I would now like to make a statement in my capacity as the representative of Croatia.

I would like to welcome the presence of the Presidents of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), Judge Byron and Judge Robinson — who has addressed the Council for the first time today — as well as Prosecutors Mr. Jallow and Mr. Brammertz.

I thank them for their respective reports and would like to make a few remarks, primarily regarding the ICTY, given the importance my country attaches to its work. Croatia welcomes the commitment with which both Tribunals continue to advance their respective exit strategies, as reflected in today's reports.

We understand that the Tribunals are expected to fulfil their mandates as early as possible without compromising their standards or the integrity of the judicial process. We also understand that the failure to locate and arrest the remaining fugitives constitutes a major obstacle to that goal.

The arrests this year of the fugitives Radovan Karadzic and Stojan Zupljanin, while long overdue, mark an important benchmark in completing the ICTY's mandate. We hope to see an early beginning of their trials. We are pleased to hear that the arrest and trials of the remaining fugitives, Ratko Mladić and Goran Hadžić, who have been indicted for some of the most atrocious crimes committed in post-Second World War Europe — namely the massacres committed in Srebrenica and Vukovar — remain a priority for the ICTY.

We should not forget that the Tribunals continue to operate in societies that still struggle to overcome the legacies of the past and are still trying to heal from within. For instance, in Bosnia and Herzegovina only last week another mass grave was unearthed in the vicinity of Srebrenica, containing the remains of close to 1,000 victims who were killed under the command of General Ratko Mladić 13 years ago.

An early advocate of the establishment of the ad hoc Tribunals, Croatia cannot emphasize strongly enough the vital importance of the judicial process in individualizing criminal responsibility for the crimes committed in both the former Yugoslavia and Rwanda. To quote my Prime Minister Ivo Sanader, who addressed the General Assembly this fall regarding these issues: "Just punishment must also serve truth and open the way to lasting peace, security and reconciliation". That is why it is crucial that the remaining fugitives also face justice. Their impunity must not outlive the existence of the Tribunals.

We know that, without the unreserved support of the entire international community, the international tribunals remain powerless.

For its part, Croatia remains committed, as always, to full and unequivocal cooperation with the Tribunal. Over the years, the Croatian Government has demonstrated the seriousness of its commitment by developing a close working relationship and extending its assistance to the Tribunal on a host of different issues, including by granting access to a staggering amount of sensitive documentation emanating from the highest military and police authorities. It is in our shared interest to continue cooperating in good faith and in a responsible and professional manner.

I would like to stress that, in Gotovina's case alone, the Croatian Government has delivered close to 2,000 specific and sensitive police and military

documents, as requested by the Office of the Prosecutor. This clearly indicates that extensive and intense cooperation does exist and will continue in the future, because the search for additional documents is still ongoing.

Croatia is determined to do all in its power to meet the Prosecutor's remaining request. This is the message that has been unequivocally conveyed to the Prosecutor from the highest State authorities, and to that end the Government has, over the reporting period, undertaken a number of operational measures — administrative, as well as investigative and judicial steps — against certain individuals. Croatia continues to conduct administrative and criminal investigations with the aim of determining whether those documents exist and if they were unlawfully taken and, if so, of identifying the persons responsible and bringing them to justice. We note that the Prosecutor has taken into account the additional steps that Croatia has taken since the submission of his written report.

As the Tribunals enter the last phase of their existence, Croatia is pleased to be in a position to take part in the ongoing discussions and to share its insight and experience on their residual functions, which will have to continue even after the completion of the trials. Allow me to use this occasion to thank the delegation of Belgium, which facilitated this process, for its efforts and dedication. My Government, which has developed a close working relationship with the International Tribunal for the Former Yugoslavia and is determined to continue its domestic efforts to prosecute war crimes committed in its territory since 1991, has a special interest in finding a sustainable, just and practical solution for discharging the Tribunals' residual functions, notably those related to the future of the Tribunals' archives and the modalities of the serving of sentences.

The Tribunals continue to have our full support as they carry out the remainder of their mandate. In this, we are guided by the goal for which they were established: closing the impunity gap. This will be their most important heritage. That is why the international community cannot afford to declare their mandates complete before every effort has been made to bring those most responsible to justice, however long it takes.

I now resume my functions as President of the Security Council.

I now give the floor to the Minister of Justice and Attorney General of Rwanda.

Mr. Karugarama (Rwanda): I thank you, Sir, for the opportunity to contribute to this debate. My delegation wishes to thank the President and the Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) for their comprehensive reports on progress made in effectively discharging the mandate of the ICTR.

The ICTR has registered progress in the discharge of its mandate. Some of the most notorious genocide suspects have been arrested and brought to justice. An increasing number of countries have increased their cooperation with the court. A number of countries have responded to Rwanda's call to arrest and extradite other genocide suspects whose cases do not fall under the mandate of the ICTR. Rwanda has consistently and persistently cooperated and supported the ICTR and will continue to do so.

As a result of the legal powers and resources vested in the court, as well as the specific support that Rwanda provides, the ICTR has managed to register significant achievements. We are informed, for example, that before Christmas the ICTR will read one of the long-awaited judgements in the case involving four senior ex-military commanders: Théoneste Bagosora, Gratien Kabiligi, Anatole Nsengiyumva and Aloys Ntabakuze.

In 2003, the Security Council adopted resolution 1503 (2003) providing for completion of the ICTR's activities. The resolution set two deadlines for completion: December 2008 for all trials and December 2010 for all appeals. The resolution further directed that those cases that may not be completed within the set deadlines — especially those involving mid- and low-ranking suspects — should be transferred to national jurisdictions, including Rwanda's. Under the resolution, the ICTR was required to devise an implementation strategy and to report to the Security Council on its effective implementation.

As part of the implementation of the resolution on completion, the ICTR Prosecutor began consultations with the Government of Rwanda on possibilities for transfer of cases to Rwanda. The transfer to Rwanda is based primarily on the fact that the crimes falling under the ICTR's mandate were committed in Rwanda, mostly by Rwandans and against fellow Rwandans. The evidence and witnesses

used by the court are mainly from Rwanda. The ends of justice administered by the Tribunal are supposed to be more visible in Rwanda than elsewhere. That makes Rwanda the State most responsible for and concerned in the pursuit of justice over those crimes. In that regard, Rwanda has found it imperative to participate fully in the determination of matters pertaining to the ICTR, particularly the completion process.

Over the past three years, Rwanda has been preparing to handle ICTR transfer cases. The preparations were done in consultation with the Office of the ICTR Prosecutor. As part of the preparations, a comprehensive piece of legislation was passed in March 2000 to govern the transfer of cases from the ICTR and any other State to Rwanda. The law provides sufficient guarantees for fair trial. It was negotiated between the ICTR and Rwanda and is specifically based on the ICTR's rules of procedure and evidence, as well as other best practices recognized and applied by the ICTR. The law allows the ICTR to monitor trials and recognizes the ICTR's primacy and right to call back transferred cases in the event that the requisite standards are not met.

Modern courtrooms have been prepared. For the past two years, a joint programme has been running between ICTR and Rwanda under which we have conducted familiarization, interaction and training between the ICTR and Rwandan judges, prosecutors and members of the bar association, including court administrative support staff. A modern holding cell has been constructed in Kigali to accommodate ICTR detainees who will be appearing in court in Kigali.

Both the Prosecutor and the Tribunal's Registrar have conducted a series of visits to Rwanda to verify Rwanda's readiness and willingness to receive ICTR's outstanding caseload. They have expressed their satisfaction with the level of readiness attained by Rwanda's judicial institutions in that regard. We have been able to make these preparations with the bilateral and multilateral support of our development partners, including some members of this Council.

Following a judicious assessment of Rwanda's competence to handle transfer cases, the ICTR Chief Prosecutor made requests to the ICTR judges to transfer some of these cases to Rwanda. Five requests were filed by the Prosecutor with the court. In all the requests, Rwanda supported the ICTR Prosecutor by presenting evidence of its readiness and willingness to handle the cases according to the required standard. Rwanda appeared as amicus curiae in those requests. Despite all these efforts, the ICTR judges rejected four of the applications, and one is still pending.

The ICTR has acknowledged that Rwanda has attained a sufficient level of competence in its legal and judicial system. However, inadequacies still exist. These inadequacies are common to all systems and are not insurmountable. There are remedial measures inherent within our judicial system that seek to address the concerns raised by the ICTR judges in their decisions, for example on witness protection and equality of opportunity for the prosecution and the defence. Rwanda has addressed most of those concerns and will continue to do so. We therefore urge the ICTR Judges to re-examine the transfer of cases to Rwanda.

We reiterate that ICTR decisions have the effect, unfortunately, of undermining the trust and confidence that Rwanda has painstakingly built. It is this trust and confidence that have led certain Governments to apprehend some of the most wanted fugitives, found on their respective territories.

However, we are particularly concerned that, for example, on the basis of the ICTR decisions, the German judicial authorities, citing ICTR precedent, released two notorious genocide suspects — namely Callixte Mbarushimana and Rwabukombe Onesphore — and only a few a days ago a French appellate court released another genocide suspect in spite of the overwhelming evidence, again citing ICTR precedent.

The ICTR rulings rejecting the transfer of cases to Rwanda almost amount to an invitation to States not to cooperate with the transfer and apprehension of these fugitives. That is why we call upon the Security Council to consider this matter as the potential cause of a serious judicial impasse that will definitely create an impunity gap, and we invite the Council to take remedial measures accordingly.

We re-emphasize that the fugitives still at large are not limited to the 13 appearing on the ICTR list. It is very important for this Council to ensure that the conclusion of the ICTR mandate does not become an amnesty for those not included on the ICTR condensed list. Rwanda appreciates the continued efforts of some Governments to apprehend the fugitives. The proceedings for their extradition to Rwanda are currently under way in various countries, notably the

United Kingdom, Sweden, New Zealand, Finland, the Netherlands and Canada, to mention but a few.

The ICTR statute, in article 26, makes Rwanda the primary destination for convicted persons to serve their sentence. In 2001, the ICTR transferred six convicts to another jurisdiction without due regard for the provisions of article 26 and without serving notice to Rwanda, as required under rule 103 of the Tribunal's rules of procedure. In March 2008, an agreement for the transfer of convicts to Rwanda was finally signed between the ICTR and the Rwandan Government. This agreement has been ratified by both chambers of the Rwandan Parliament. In spite of that agreement and its ratification by our Parliament, about two weeks ago the ICTR transferred two other suspects, Hassan Ngeze and Ferdinand Nahimana, to the Republic of Mali.

We are aware that 10 others may soon be transferred to another State in an outright breach of the spirit of the very statute that established the ICTR. We believe that the transfer of cases and of convicts to Rwanda will make justice apparent to Rwandans, who are both the victims and the perpetrators of the genocide. Our reading of the spirit and intent of article 26, in juxtaposition with rule 103 of the Tribunal's rules of procedure, would indicate that Rwanda should be the favoured destination for the transfer of cases and convicts, and that this should be the rule rather than the exception, as has been the case. The ICTR should feel the compelling need to have justice not only done, but also seen to be done by Rwandans, who are the primary beneficiaries of its mandate.

Lastly, the issue of the transfer of archives to Rwanda remains pending. Consultations have been ongoing with the team designated to study and make recommendations on the matter. We have reiterated our desire and readiness to take full custody of the archives. Rwanda has submitted a formal request to the Security Council, expressing our desire to have the archives stored and managed in Rwanda. We hope for the best in the Council's decision on the matter.

At this crucial juncture, Rwanda shares the Council's desire to reach a reasonable and effective conclusion to the ad hoc mandate of the Tribunal. We therefore urge the Council to do all within its power to ensure that the ICTR completion strategy is reached without undermining the fight against impunity — or creating an impunity gap — and the efforts of my Government in that regard.

The President: I now give the floor to the representative of Serbia.

Mr. Jevremović (Serbia): At the outset, I would like to congratulate Judge Patrick Robinson on his appointment to the post of President of the International Criminal Tribunal for the Former Yugoslavia (ICTY). I would also like to take this opportunity to recognize the contribution that Judge Fausto Pocar made to the proceedings of the Tribunal while he was its President.

Serbia expresses its gratitude to Judge Robinson and Mr. Serge Brammertz, the ICTY Prosecutor, for their efforts in compiling their comprehensive reports. We appreciate the fact that the substance and thrust of the reports are in agreement with our own assessment of the level of cooperation achieved so far. The reports recognize Serbia's efforts to comply with its legal and moral obligations, as well as the difficulties encountered with regard to cooperation, such as in the areas of witness protection. They also acknowledge the commitment of Serbian authorities to address those difficulties and affirm that joint efforts will be made to overcome them. That recognition is an illustration of the growing belief in the political will and commitment of Serbia to fully cooperate with the Tribunal and in its resolve to apprehend the two remaining fugitives, namely, Ratko Mladić and Goran Hadžić.

Over the past two weeks, following the publication of the Prosecutor's report, Serbia provided additional information to the ICTY Prosecutor's Office in connection with the case of Momčilo Perišić and redoubled its efforts to resolve the issue and improve its overall cooperation with the Tribunal. Also, in order to keep the international community informed, Serbia circulated a detailed report yesterday on the Government's activities related to cooperation.

We fully support the ICTY completion strategy, defined by resolutions 1503 (2003) and 1534 (2004). Based on that strategy, the ICTY has identified the 12 most important functions of the residual mechanism to be set up upon the completion of the Tribunal's activities. The issue of the ICTY's archives is described as one of the most important of those functions. Serbia is interested in the ongoing dialogue on functions, in particular on the issue of the archives. On 23 October 2008, the Government of Serbia took its own position on the issue and advised the ICTY and the Security Council accordingly. We would like

interested States to be given greater consultation possibilities, with a view to enabling them to make constructive contributions to the process of formulating the residual mechanism.

In conclusion, let me reiterate once again Serbia's commitment to full cooperation with the ICTY. The reports presented to the Council also take note of that commitment. My country is resolved to continue to make its contribution to the proceedings of the Tribunal and will make every effort to assist the Tribunal to bring its work to a successful conclusion, thereby ensuring the Tribunal's lasting legacy.

The President: I now give the floor to the representative of Bosnia and Herzegovina.

Ms. Čolaković (Bosnia and Herzegovina): First of all, my delegation would like to welcome the Presidents and Prosecutors of both Tribunals. I would also like to express my deepest appreciation to the President and Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY) for presenting their report (see S/2008/729). We are also grateful for the assessments they contain.

The work of that Tribunal has been crucial, and continues to be crucial in advancing the cause of justice in my country and in the countries of the region. It is important that the Tribunal leave an international criminal justice legacy for the future, reaffirming the very idea that there can be no reconciliation without justice, no justice without law and no meaningful law without a court to decide what is just and lawful.

The consistently positive assessments in the reports regarding cooperation between Bosnia and Herzegovina and the ICTY prove the strong determination of my country to serve justice. In addition, the War Crimes Chamber of the State Court of Bosnia and Herzegovina is fully operative, demonstrating the willingness and capability of my country to conduct such trials. Bosnia and Herzegovina will continue to provide access to Government archives upon official requests from the ICTY.

My country recognizes and commends the efforts of Prosecutor Serge Brammertz in securing justice for victims and their families. We reiterate our readiness to continue to cooperate fully in that regard.

Bosnia and Herzegovina welcomes the arrest of two of the four most wanted fugitives, Radovan Karadzić and Stojan Župljanin. Their arrest represents a major breakthrough. However, much remains to be done to arrest the two remaining fugitives and bring them to the Tribunal in The Hague. Bosnia and Herzegovina therefore calls for the immediate arrest of the two remaining indicted war criminals who are still at large, Ratko Mladić and Goran Hadžić. We fully support the continuation of the work of the Tribunal until justice is brought to the families of the victims. Only then can we say that the mandate of the Tribunal is complete.

The implementation of the completion strategy remains of great concern to us. We are aware that the strategy's residual mechanisms are very complex and require further consultations within the relevant bodies of the United Nations. Those mechanisms should be carefully designed in order to address the issue of prosecuting those subject to outstanding warrants and arrest and to ensure that impunity is not an option.

Bosnia and Herzegovina appreciates the valuable support provided by the United Nations and its Member States for the work of the Tribunal. We look forward to the continuation of that support until all conditions are met for the end of the Tribunal's mandate.

In order to live up to the spirit and letter of the Universal Declaration of Human Rights, whose sixtieth anniversary we commemorate this year, we the Member States and the United Nations — depositary of the Declaration — should not hesitate to fully support the Tribunal in order to send the strong message that crime will not remain unpunished.

The President: I now give the floor to the representative of Kenya.

Mr. Muita (Kenya): I wish to express my appreciation to you, Mr. President, and the other members of the Council for allowing me to participate in today's debate.

At the outset, I wish to thank the Presidents and Prosecutors of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) for their comprehensive reports, submitted to the Council in conformity with the respective statutes establishing the two separate Tribunals.

Kenya strongly supports the international criminal justice system. We recognize that the ad hoc Tribunals established by the Council and the

International Criminal Court (ICC) must provide and protect the proper administration of justice by prosecuting those who promote impunity. To that end, the cooperation of Member States is critical if the Tribunals are to succeed in restoring justice, securing peace and preventing mass atrocities in the future. Kenya takes seriously its international obligations to cooperate fully with the international community in that regard.

Kenya appreciates the work of both Presidents for the manner in which they have conducted the affairs of the respective Tribunals. My delegation, however, wishes to comment on the work of the Prosecutor of the ICTR, particularly on the issue of fugitives.

I have listened carefully to the statement by the Prosecutor of the ICTR concerning a fugitive who is wanted by the Tribunal for prosecution. In his statement the Prosecutor mentioned the case of Félicien Kabuga, who, among other indictees, has not been apprehended to face justice. He alluded to the presence of the fugitive in Kenya. These allegations are not only untrue, but also of grave concern to my country.

I would like to emphasize that in the Kabuga case, the Government of Kenya has fully cooperated with the ICTR officials, as called for by the Security Council. For the past three years, the Government of Kenya has been engaged with the Prosecutor's Office, largely through the Joint Kenya-ICTR Task Force. In demonstrating our commitment to the cause of the ICTR, in May 2008 the Government obtained an order from the High Court of Kenya freezing property belonging to the estate of Mr. Kabuga.

In the past Kenya has arrested and surrendered to the ICTR some of the Rwandese fugitives found within Kenyan territory. In the same spirit, should Mr. Kabuga ever be found on Kenyan soil, he will likewise be apprehended and surrendered to the Tribunal. The nature of fugitives is such that they hide and at times send those who are pursuing them in the wrong direction. Therefore the search for Kabuga should be widened to cover other areas, because we might be over-concentrating on Kenya, whereas the fugitive could be living comfortably elsewhere.

In conclusion, I wish to assure the Council of my Government's unwavering cooperation with the court in all respects, and of her continued commitment to the high ideals of international criminal justice and eradication of impunity. We will continue to implement the recommendations of the Joint Kenya-ICTR Task Force.

The President: I now give the floor to Judge Byron, President of the International Criminal Tribunal for Rwanda, to respond to questions and comments.

Judge Byron: I wanted first to express appreciation to those delegations who especially expressed support for the applications before you. I would like to comment that approval would assist us in attaining the objectives of the completion strategy.

I also wish to express my thanks for the general support that all Member States have expressed. I wish to give assurances that we will continue to do our utmost to earn their continued support and to justify the expressions that have already been made.

I must also take this opportunity to join with the Member States who have congratulated Belgium on its chairmanship of the Working Group. From the perspective of our Tribunal, we think we have benefited enormously from the opportunity to interact and to share and exchange views on the issue of residual mechanisms. I think I should probably put on record that our Tribunal benefited enormously from the visit of the Working Group, and we thought it had an important impact on the improvement of the morale of the Tribunal's staff. So I wish to express our appreciation.

We have taken note of the remarks by Member States concerning the issue of the referrals. I want to assure the Council that the Tribunal is continuing the capacity-building relationship with Rwanda, to the extent that our trust fund allows us to. This, of course, gives me the opportunity to once more invite Member States to provide additional support to our capacity-building efforts by contributing, if they wish to, to the Voluntary Trust Fund, which supports these efforts.

The decisions already taken on referrals do not undermine the fact that referrals continue to be part of our completion strategy. As the Prosecutor has mentioned, he is still engaged in investigations and discussions, and it is open to him, when he considers that changes have been made that justify a new application, to renew his application before the court to achieve this goal.

Lastly, I wish to express appreciation for the strong statements that have been made concerning the

continuing support for the arrest of the remaining fugitives. We also feel that that will assist in completing the fight against impunity and in the satisfactory completion of our mandate.

The President: I thank Judge Byron for his clarifications. I now give the floor to Mr. Jallow, Prosecutor of the International Criminal Tribunal for Rwanda, to respond to questions and comments.

Mr. Jallow: Like President Byron, I would like to reassure our Rwandan colleagues that, as a matter of policy, the ICTR is indeed committed to the transfer of cases in accordance with the conditions that are laid down in our rules. It will be recalled that we have two systems of transfer: a Prosecutor to prosecute a transfer, and a transfer of cases of indictees. Under the initial system, I have already handed 30 files over to the Rwandan prosecutor-general for him to consider investigating and, if possible, prosecuting. The transfer of indictees, of course, is governed by the rules of procedure and evidence of the Tribunal.

While we have recognized the tremendous efforts and progress that Rwanda has made in trying to satisfy those conditions, we believe the best way out of the impasse is for further measures to be taken that would enable me — as I said earlier — to go back to the judges with fresh applications for reconsideration of the earlier decisions, measures that need to be taken by Rwanda in order to meet the concerns of the judges. I think that is the best way out of the impasse.

I also wanted to reiterate, with regard to the case of Kabuga, that the information I bring to the Council concerning his entry and residence in Kenya and his business activities there is not based on a unilateral investigation by the Office of the Prosecutor. Some three years ago a joint task force was established by the ICTR and the Kenyan Government, comprising the investigators from the ICTR and members of the Kenya police force. They have submitted a series of reports. It is those reports that have documented Kabuga's entry into the country, from immigration records that are available in Kenya, his application for residence and the approval of his residence and of his visa, his establishment of various businesses in the country, his opening of bank accounts, et cetera. It is information collected jointly by the Kenya police and by the ICTR investigators. It is therefore surprising that it is being described as untrue by the representative of Kenya. It is information that is available to the Kenya Government.

Since those reports were submitted, as I said, the only step taken was in May, in relation to one property. There are bank accounts there, some of which, it is suspected, were operated by his colleagues. There is at least one account in his own name, in respect of which no steps have been taken so far by the Government of Kenya. No steps have been taken either in respect of the businesses which he is suspected of running with colleagues.

It is not for the ICTR to implement the recommendations of that task force, because we do not have the mandate to do that in Kenya or in any other country. The Tribunals do not have the powers to make such an arrest in any country; that is for national law enforcement authorities to do. The Tribunal does not have powers to freeze assets and accounts in any country; that is for national authorities to do. Therefore, it is now the responsibility of the Government of Kenya to move forward to implement those recommendations, which have been put together in a report jointly prepared by the ICTR and the Kenyan police, and not unilaterally by the ICTR alone.

I would just wish to appeal to my colleague to reiterate the message to his colleagues back home that, having worked with the ICTR until we were able to unearth a lot of information concerning Kabuga's activities in Kenya and reached the point at which we have been able to make a number of recommendations, he should urge his colleagues in Nairobi to now move forward towards implementing those recommendations, which were jointly arrived at.

Beyond that, I should like to thank you, Sir, and the members of the Council for your continued support to the work of the Tribunal.

The President: There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

May I take this opportunity, on behalf of the Security Council, to thank Judge Robinson, Judge Byron, Prosecutor Brammertz and Prosecutor Jallow for taking the time to brief the Security Council.

The meeting rose at 1.45 p.m.